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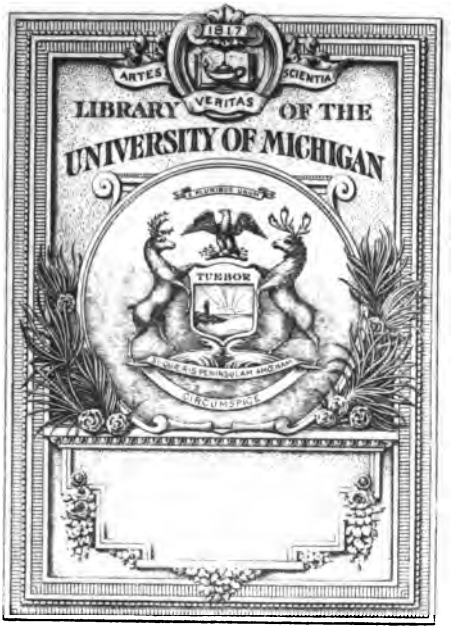
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NEW YORK STATE

WORKMEN'S COMPENSATION LAW

WITH AMENDMENTS, ADDITIONS AND ANNOTATIONS TO JULY 1, 1917

Issued under the direction of

THE INDUSTRIAL COMMISSION

JOHN MITCHELL, Chairman

EDWARD P. LYON
JAMES M. LYNCH
LOUIS WIARD
HENRY D. SAYER

PREPARED BY THE BUREAU OF STATISTICS AND INFORMATION

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EXPLANATORY NOTE

The Workmen's Compensation Law had been in effect three years on the first of July, 1917, administered by the Workmen's Compensation Commission during its first eleven months, and, thenceforward, by the State Industrial Commission.

In addition to the reënacting act, L. 1914, ch. 41, effective March 16, 1914, seven later acts have amended the Workmen's Compensation Law; namely, L. 1914, ch. 316, effective April 14, 1914; L. 1915, ch. 167, effective April 1, 1915, ch. 168, effective April 1, 1915, ch. 615, effective May 12, 1915, and ch. 674, effective May 22, 1915; L. 1916, ch. 622, effective May 20, 1916; and L. 1917, ch. 705, effective June 1, 1917. The numbered notes appended herein to sections and subdivisions show the exact wording and the origin of every amendment.

Notes following the numbered notes give cross-references and references to court decisions and attorney-general's opinions. The Monthly Bulletin of the State Industrial Commission, the first number of which appeared in October, 1915, presents compensation rulings, court decisions, comments of administrative officers and current compensation items. The State Department Reports, issued semi-monthly by the Miscellaneous Reporter's office since October 1, 1914, give the full texts of many of the State Industrial Commission's compensation rulings and also the Attorney-General's compensation opinions. References to these two sources appear herein under the abbreviations, Bul. and S.D.R. The texts of the Appellate Division decisions are to be found in the Appellate Division Reports, beginning with Volume 165, and the texts of the Court of Appeals decisions in the New York Reports. beginning with Volume 215. The Miscellaneous Reports of New York, beginning with Volume 90, give some cases involving compensation. The Reports of the Attorney-General, beginning with 1914, contain occasional compensation opinions. Special Bulletin, No. 81, issued by the State Industrial Commission, is a collection of the full texts of all courts and Attorney-General's opinions down to August 1, 1916, and of several important court opinions of later date.

An index and an alphabetical finding list of employments covered by the law appear at the end of this pamphlet.

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CONSTITUTIONAL PROVISION

ARTICLE I OF THE CONSTITUTION

§ 19. Nothing contained in this constitution shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health, or safety of employees; or for the payment, either by employers, or by employers and employees or otherwise, either directly or through a state or other system of insurance or otherwise, of compensation for injuries to employees or for death of employees resulting from such injuries without regard to fault as a cause thereof, except where the injury is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty; or for the adjustment, determination and settlement, with or without trial by jury, of issues which may arise under such legislation; or to provide that the right of such compensation, and the remedy therefor shall be exclusive of all other rights and remedies for injuries to employees or for death resulting from such injuries; or to provide that the amount of such compensation for death shall not exceed a fixed or determinable sum; provided that all moneys paid by an employer to his employees or their legal representatives, by reason of the enactment of any of the laws herein authorized, shall be held to be a proper charge in the cost of operating the business of the employer.

This section, adopted November 4, 1913, and effective, January 1, 1914, overrides section eighteen of article one of the Constitution relative to the right of action to recover damages for injuries resulting in death: Shanahan v. Monarch Engineering Co., 219 N. Y. 469.

THE WORKMEN'S COMPENSATION LAW

CHAPTER 816 OF THE LAWS OF 1913, AS AMENDED AND RE-ENACTED BY CHAPTER 41 OF THE LAWS OF 1914, CONSTITUTING CHAPTER 67 OF THE CONSOLIDATED LAWS, AS AMENDED.

[*This New York Workmen's Compensation Law has been declared constitutional by the Supreme Court of the United States: New York Central R. R. Co.* v. *White*, 243 *U. S.* 188. *Its constitutionality had previously been upheld by the Court of Appeals of New York in Jensen* v. *Southern Pacific Co.*, 215 *N. Y.* 514, *and Walker* v. *Clyde Steamship Co.*, 215 *N. Y.* 529, *which cases, however, the Supreme Court of the United States has reversed on the ground that the New York workmen's compensation act conflicts with the general maritime law of the United States: Southern Pacific Co.* v. *Jensen*, 244 *U. S.* —, *and Clyde Steamship Co.* v. *Walker*, 244 *U. S.* —. *An older, voluntary plan of workmen's compensation is embodied in Labor Law*, §§ 204–212, *still upon the statute books. The Workmen's Compensation Law should be construed broadly and liberally: Matter of Petrie*, 215 *N. Y.* 335; *Costello* v. *Taylor*, 217 *N. Y.* 179; *Winfield* v. *N. Y. C. & H. R. R. R. Co.*, 168 *App. Div.* 351; 216 *N. Y.* 284; *Moore* v. *Lehigh Valley R. R. Co.*, 169 *App. Div.* 177; 217 *N. Y.* 27; *Rheinwald* v. *Builders' Brick & Supply Co.*, 168 *App. Div.* 425; *McQueeney* v. *Sutphen & Myer*, 167 *App. Div.* 528.]

Article 1. Short title, application, definitions (§§ 1–3).
2. Compensation (§§ 10–34).
3. Security for compensation (§§ 50–54).
4. State workmen's compensation commission (§§ 60–77).
5. State insurance fund (§§ 90–106).
6. Miscellaneous provisions (§§ 110–119).
7. Laws repealed; when to take effect (§§ 130–131).

ARTICLE 1

SHORT TITLE; APPLICATION; DEFINITIONS

Section 1. Short title.
2. Application.
3. Definitions.

Section 1. **Short title.**— This chapter shall be known as the "workmen's compensation law."

§ 2. **Application.**— Compensation provided for in this chapter shall be payable for injuries sustained or death incurred by employees engaged in the following hazardous employments:*

Group 1. The operation, including construction and repair, of railways operated by steam, electric or other motive power, street railways, and

* Compare the notes to the several subdivisions under § 3. For rearrangement of the groups of § 2 by the Commission compare § 95 and foot-note thereunder. In determining whether or not the employment in a given claim case comes within a group the courts reject far-fetched meanings and apply the rule of *ejusdem generis:* Wilson v. Dorflinger & Sons, 218 N. Y. 84; Aylesworth x. Phoenix Cheese Co., 170 App. Div. 34; DeLaGardelle v. Hampton Co., 167 App. Div. 617; Tomassi v. Christensen, 171 App. Div. 284; Grasell v. Brodhead, 175 App. Div. 874.

incline railways, but not their construction when constructed by any person other than the company which owns or operates the railway, including work of express, sleeping, parlor and dining car employees on railway trains.

Compare § 114, Interstate commerce.

Group 2. Construction, [1]repair and operation of railways not included in group 1. [*Group 2 am'd by L. 1916, ch. 622.*]

[1] Word "repair," inserted by L. 1916, ch. 622.

Compare § 114, Interstate commerce.

Group 3. The operation, including construction and repair, of car shops, machine shops, steam and power plants, and other works for the purposes of any such railway, or used or to be used in connection with it when operated, constructed or repaired by the company which owns or operates the railway.

Compare § 114, Interstate commerce.

Group 4. The operation, including construction and repair of car shops, machine shops, steam and power plants, not included in group three.

Compare § 114, Interstate commerce.

Group 5. The operation, including construction and repair, of telephone lines and wires for the purposes of the business of a telephone company, or used or to be used in connection with its business, when constructed or operated by the company.

Compare § 114, Interstate commerce.

Group 6. The operation, including construction and repair, of telegraph lines and wires for the purposes of the business of a telegraph company, or used or to be used in connection with its business, when constructed or operated by the company.

Compare § 114, Interstate commerce.

Group 7. Construction [1]or repair of telegraph and telephone lines not included in groups five and six. [*Group 7 am'd by L. 1916, ch. 622.*]

Words "or repair," inserted by L. 1916, ch. 622.

Compare § 114, Interstate commerce.

Group 8. The operation, within or without the state, including repair, of vessels other than vessels of other states or countries used in interstate or foreign commerce, when operated or repaired by the company; [1]marine wrecking. [*Group 8 am'd by L. 1916, ch. 622.*]

[1] Words "marine wrecking," added by L. 1916, ch. 622.

Compare § 114, Interstate commerce, and group 10, below, note on longshore work. The Federal maritime law excludes this group: Southern Pacific Co. v. Jensen, 244 U. S. ——, May 21, 1917.

"Operation" includes loading and unloading; when the employer and owner is a New York corporation, the presumption is that the vessel is not one of another State or country: Edwardsen v. Jarvis Lighterage Co., 168 App. Div. 368.

The Appellate Division, May 2, 1917, in Charlton v. Hilton-Dodge Trans. Co., reversed an award to a New York employee of a foreign corporation for an accident occurring at sea.

Group 9. Shipbuilding, including construction and repair in a ship-yard or elsewhere, not included in group eight.

Group 10. Longshore work, including the loading or unloading of cargoes or parts of cargoes of grain, coal, ore, freight, general merchandise, lumber or other products or materials, or moving or handling the same on any dock, platform or place, or in any warehouse or other place of storage.

Compare § 114, Interstate commerce. Federal maritime law excludes this group: Southern Pacific Co. v. Jensen, 244 U. S. ——, May 21, 1917.

The specific enumeration of longshore work in this group excludes such work from group 8: Jensen v. Southern Pacific Co., 215 N. Y. 519, 520.

Rag picking in a refuse dump on the shore is not longshore work: Tomassi v. Christensen, 171 App. Div. 284, but compare addition of "garbage sorters" to group 13, below.

For a special declaration of the Workmen's Compensation Commission relative to longshore work compare S. D. R.,* vol. 1, p. 413; but compare group 13.

Group 11. Dredging, subaqueous or caisson construction [1]or repair, and pile driving. [*Group* 11 *am'd by L.* 1916, *ch.* 622.]

Driving sheeting for a jetty to protect baths on a water front is pile driving: Mazzarisi v. Ward & Tully, S. D. R., vol. 4, p. 443; 170 App. Div. 868.

[1] Words "or repair," inserted by L. 1916, ch. 622.

Group 12. Construction, installation, [1]repair or operation of electric light and electric power lines, dynamos, or appliances, and power transmission lines. [*Group* 12 *am'd by L.* 1916, *ch.* 622.]

[1] Word "repair," inserted by L. 1916, ch. 622.

Group 13. Paving; [1]road building, curb and sidewalk construction or repair; sewer and subway construction [2]or repair, work under compressed air, excapvation, tunneling and shaft sinking, well digging, laying and repair of underground pipes, cables and wires; [3]grave digging; undertaking; landscape gardening; planting, moving, trimming and care of trees and tree surgery, not included in other groups; [4]street cleaning, ashes, garbage or snow removal; [5]garbage sorters; [6]operation of water works. [*Group* 13 *am'd by L.* 1916, *ch.* 622; *and L.* 1917, *ch.* 705.]

Where the principal business of the employer is garbage removal, accidental injury to an employee whose sole work is sorting on the dump is compensatable: Sacalli v. Marrone, Bul.,† vol. 2, p. 91; S. D. R., no. 68, p. 116.

[1] Words "road building, curb and sidewalk construction or repair," inserted by L. 1916, ch. 622.

[2] Words "or repair" inserted by L. 1916, ch. 622.

[3] Words "grave digging . . . and tree surgery" inserted by L. 1917, ch. 705.

[4] Words "street cleaning, ashes, garbage or snow removal" inserted by L. 1916, ch. 622.

[5] Words "garbage sorters" inserted by L. 1917, ch. 705.

[6] Words "operation of water works" added by L. 1916, ch. 622.

Group 14. Lumbering; logging, river-driving, rafting, booming, saw mills, [1]bark mills; shingle mills, lath mills, [2]lumber yards; manufacture of veneer and of excelsior; manufacture of [3]barrels, kegs, vats, tubs, staves, spokes, or headings. [*Group* 14 *am'd by L.* 1916, *ch.* 622.]

[1] Words "bark mills," inserted by L. 1916, ch. 622.

[2] Words "lumber yards," inserted by L. 1916, ch. 622.

[3] Words "barrels, kegs, vats, tubs," inserted by L. 1916, ch. 622.

Lumberman cases subject of court opinions are: Claremont v. DeCoss, S. D. R., vol. 7, p. 463; 175 App. Div. 952; 220 N. Y. Rep. ——, Mar. 20, 1917; Peake v.

* "S. D. R." is an abbreviation for State Department Reports.

† "Bul." is an abbreviation for Monthly Bulletin of the State Industrial Commission.

Lakin, S. D. R., vol. 9, p. 220; 176 App. Div. 917; —— N. Y. Rep. ——, May 8, 1917; Sullivan v. Preston, S. D. R., vol. 10, p. 566; 177 App. Div. 110, Mar. 7, 1917; and Uhl v. Hartwood Club, S. D. R., vol. 9, p. 360; Bul., vol. 2, p. 27; 177 App. Div. 41; affirmed by Court of Appeals, July 11, 1917.

Group 15. Pulp and paper mills.

Group 16. Manufacture of furniture, interior woodwork, organs, pianos, piano actions, canoes, small boats, coffins, wicker and rattan ware; upholstering; manufacture of mattresses or bed springs.

Group 17. Planing mills, sash and door factories, manufacture of wooden and corrugated paper boxes, cheese boxes, mouldings, window and door screens, window shades, carpet sweepers, wooden toys, [1]wooden articles and wares or baskets; [2]cork cutting. [*Group* 17 *am'd by L.* 1916, *ch.* 622.]

[1] Word "wooden," inserted by L. 1916, ch. 622.

[2] Words "cork cutting," added by L. 1916, ch. 622.

The term "mouldings" does not cover the fastening of mouldings for picture hanging: Grasell v. Brodhead, 175 App. Div. 874. Since the Grasell accident picture hanging has been covered by amendment to group forty-two effected by L. 1916, ch. 622.

Group 18. Mining; reduction of ores and smelting; preparation of metals or minerals; [1]oil and gas wells. [*Group* 18 *am'd by L.* 1916, *ch.* 622.]

[1] Words "oil and gas wells," added by L. 1916, ch. 622.

Group 19. Quarries; sand, shale, clay, or gravel pits; lime kilns; manufacture of brick, tile, terra-cotta, [1]asbestos, fire-proofing, or paving blocks, manufacture of calcium carbide, cement, asphalt or paving material; [2]stone crushing or grinding; [3]coal yards. [*Group* 19 *am'd by L.* 1916, *ch.* 622; *and L.* 1917, *ch.* 705.]

[1] Word "asbestos," inserted by L. 1916, ch. 622.

[2] Words "stone crushing or grinding," added by L. 1916, ch. 622.

[3] Words "coal yards," added by L. 1917, ch. 705.

Group 20. Manufacture of glass, glass products, glassware, porcelain or pottery.

For a case involving the making of mirrors, compare McQueeney v. Sutphen & Myer, 167 App. Div. 528.

Group. 21. Iron, steel or metal foundries; rolling mills; manufacture of castings, forgings, heavy engines, locomotives, machinery, safes, anchors, cables, rails, shafting, wires, tubing, pipes, sheet metal, boilers, furnaces, stoves, structural steel, iron or metal; [1]machine shops including repairs. [*Group* 21 *am'd by L.* 1916, *ch.* 622.]

[1] Words "machine shops, including repairs," added by L. 1916, ch. 622.

Group 22. Operation and repair of stationary engines and boilers, [1]freight and passenger elevators, not included in other groups; [2]window cleaning; [3]erection, removal or repair of awnings; [4]heating and lighting. [*Group* 22 *am'd by L.* 1916, *ch.* 622; *and L.* 1917, *ch.* 705.]

[1] Words "freight and passenger elevators," inserted by L. 1916, ch. 622.

[2] Words "window cleaning," inserted by L. 1916, ch. 622.

[3] Words "erection, removal or repair of awnings," inserted by L. 1917, ch. 705.

[4] Words "heating and lighting," added by L. 1916, ch. 622.

Operation of ordinary heaters used in houses for furnishing hot water is not covered by this group: Siegfried v. Goldberg, S. D. R., vol. 7, p. 452; 175 App.

Div. 952; 220 N. Y. Rep. ——, Mar. 20, 1917; compare apartment house cases of Praino v. Peloso, 171 App. Div. 963; Dodd v. Lancashire Corp., S. D. R., vol. 9, p. 281; 176 App. Div. 924; Kammar v. Hawk, 177 App. Div. ——, Mar. 7, 1917; Stavorako v. Cassidy's Ltd., S. D. R., vol. 11, p. ——; 177 App. Div. ——, Mar. 22, 1917.

Removing a shade is incidental to cleaning a window: Tracy v. Mertens, Bul., vol. 2, p. 102.

Group 23. Manufacture of small castings or forgings, metal wares, instruments, utensils and articles, hardware, nails, wire goods, [1]screws, bolts, metal beds, sanitary, water, gas or electric fixtures, light machines, typewriters, cash registers, adding machines, carriage mountings, bicycles, metal toys, tools, cutlery, instruments, photographic cameras and supplies, sheet metal products, buttons; [2]jewelry; gold, silver and plated ware; articles of bone, ivory and shell. [*Group* 23 *am'd by L.* 1916, *ch.* 622.]

[1] Word "screws" substituted for word "screens," by L. 1916, ch. 622.

[2] Remaining words of group added by L. 1916, ch. 622.

Group 24. Manufacture of agricultural implements, threshing machines, traction engines, wagons, carriages, sleighs, vehicles, automobiles, motor trucks, toy wagons, sleighs or baby carriages; [1]blacksmiths; horse-shoers. [*Group* 24 *am'd by L.* 1916, *ch.* 622.]

[1] Words "blacksmiths; horseshoers," added by L. 1916, ch. 622.

Group 25. Manufacture of [1]ammonia, [2]petroleum, petroleum products, celluloid, pyroxylin or the compounds of [3]pyroxylin or pyroxylin plastics, gases, charcoal or artificial ice, [4]and the manufacture, storing or handling of explosives and dangerous chemicals, corrosive acids or salts, gasoline, petroleum, gun powder or ammunition; [5]laboratories; [6]ice harvesting, ice storage and ice distribution. [*Group* 25 *am'd by L.* 1916, *ch.* 622; *and L.* 1917, *ch.* 705.]

[1] Words "explosives and dangerous chemicals, corrosive acids or salts," stricken out by L. 1917, ch. 705.

[2] Word "gasoline," stricken out by L. 1917, ch. 705.

[3] Words "pyroxylin or . . . gases, charcoal, or" substituted for word "gas," by L. 1917, ch. 705.

[4] Words "and the manufacture . . . gasoline, petroleum," inserted by L. 1917, ch. 705.

[5] Word "laboratories," inserted by L. 1917, ch. 705.

[6] Words "ice harvesting, ice storage and ice distribution" added by L. 1916, ch. 622.

The addition of the ice industry to this group by L. 1916, ch. 622, may be considered in connection with Aylesworth v. Phoenix Cheese Co., 170 App. Div. 34.

Group 26. Manufacture of paint, color, varnish, oil, japans, turpentine, printing [1]and other ink, printers' rollers, tar, tarred, pitched or asphalted paper. [*Group* 26 *am'd by L.* 1916, *ch.* 622.]

[1] Words "and other," inserted by L. 1916, ch. 622.

Group 27. Distilleries, breweries; manufacture of spirituous or malt liquors, alcohol, wine, mineral water or soda waters; [1]bottling. [*Group* 27 *am'd by L.* 1916, *ch.* 622.]

[1] Word "bottling," added by L. 1916, ch. 622.

Group 28. Manufacture of drugs and chemicals, not specified in group twenty-five, medicines, dyes, extracts, pharmaceutical or toilet preparations, soaps, candles, perfumes, non-corrosive acids or chemical preparations, fertiliz-

ers, including garbage [1]or sewerage disposal plants; [2]disinfecting; shoe blacking or polish. [*Group* 28 *am'd by L.* 1916, *ch.* 622; *and L.* 1917, *ch.* 705.]

[1] Words "or sewerage," inserted by L. 1916, ch. 622.

[2] Word "disinfecting," inserted by L. 1917, ch. 705.

This group covers a general utility man accidentally killed while building a shelf in a wholesale drug establishment: Larsen v. Paine Drug Co., 169 App. Div. 838; 218 N. Y. 252.

A mere refuse dump is not a garbage disposal plant: Tomassi v. Christensen, 171 App. Div. 284.

Group 29. Milling; manufacture of cereals or cattle foods, warehousing; storage [1]of all kinds and storage for hire; operation of grain elevators. [*Group* 29 *am'd by L.* 1916, *ch.* 622.]

[1] Words "of all kinds and storage for hire," inserted by L. 1916, ch. 622.

The amendment of 1916, inserting the words "of all kinds and storage for hire" appears to cover private as well as public storage and so to offset Mihm v. Hussey, 169 App. Div. 742, as a precedent.

Injury to an employee of a storage company by the overturning of an automobile while he is buying fruit for his employer is not compensatable: Sickles v. Ballston R. S. Co., 171 App. Div. 108; but compare recent Gurnett, Ingersoll and Benjamin cases cited under group 41.

Group 30. Packing houses, [1]meat markets, [2]wholesale groceries; fish markets; planting, cultivating and harvesting of oysters, clams or other sea foods; poultry markets; abattoirs, manufacture or preparation of meats or meat products or glue, [3]gelatine, paste or wax. [*Group* 30 *am'd by L.* 1916, *ch.* 622; *and L.* 1917, *ch.* 705.]

[1] Words "meat markets," inserted by L. 1916, ch. 622.

[2] Words "wholesale groceries . . . poultry markets," inserted by L. 1917, ch. 705.

[3] Words "gelatine, paste or wax," added by L. 1916, ch. 622.

In connection with the words "meat markets" inserted by L. 1916, ch. 622, compare Kohler v. Frohmann, 167 App. Div. 533, and Newman v. Newman, 169 App. Div. 745; 218 N. Y. 325.

This group does not cover the ordinary preparation of meat for cooking purposes: DeLaGardelle v. Hampton Co., 167 App. Div. 617; compare, however, insertion of words "Hotels having fifty or more rooms" in group 34, below, by L. 1917, ch. 705.

Group 31. Tanneries.

Group 32. [1]Furriers; manufacture of leather goods and products, belting, saddlery, harness, trunks, valises, boots, shoes, gloves, umbrellas, rubber goods, rubber shoes, tubing, tires or hose. [*Group* 32 *am'd by L.* 1916, *ch.* 622.]

[1] Word "Furriers," inserted by L. 1916, ch. 622.

Group 33. Canning or preparation of fruit, vegetables, fish or food stuffs; pickle factories and sugar refineries; [1]manufacture of dairy products. [*Group* 33 *am'd by L.* 1916, *ch.* 622.]

[1] Words "manufacture of dairy products," added by L. 1916, ch. 622.

This group does not cover the ordinary preparation of food stuffs for cooking purposes: DeLaGardelle v. Hampton Co., 167 App. Div. 617; compare, however, insertion of words "Hotels having fifty or more rooms" in group 34, below, by L. 1917, ch. 705.

The Appellate Division reversed an award in the case of a buttermaker injured before the above-noted addition of dairy products to this group: Pardy v. Boomhower Grocery Co., S. D. R., vol. 11, p. ——; ——App. Div. ——, May 2, 1917.

Group 34. [1]Hotels having fifty or more rooms; bakeries, including manufacture of crackers and biscuits, manufacture of confectionery, spices or condiments. [*Group* 34 *am'd by L.* 1917, *ch.* 705.]

[1] Words "Hotels having fifty or more rooms," inserted by L. 1917, ch. 705.

Compare denial of compensation to manager of a summer hotel: Goddard v. Hurtt, *et al.*, S. D. R., vol. 7, p. 428, February 9, 1916.

Group 35. Manufacture of tobacco, cigars, cigarettes or tobacco products.

Group 36. Manufacture of cordage, ropes, fibre, brooms or brushes; manilla or hemp products.

Group 37. Flax mills; manufacture of textiles or fabrics, spinning, weaving and knitting manufactories; manufacture of yarn, thread, hosiery, cloth, blankets, carpets, canvas, bags, shoddy or felt.

Group 38. Manufacture of men's or women's clothing, white wear, shirts, collars, corsets, hats, caps, furs or robes, [1]or other articles from textiles or fabrics. [*Group* 38 *am'd by L.* 1916, *ch.* 622.]

[1] Remaining words of group added by L. 1916, ch. 622.

Group 39. Power laundries; dyeing, cleaning or bleaching.

Group 40. Printing, [1]engraving, photo-engraving, stereotyping, electrotyping, lithographing, embossing; [2]manufacture of moving picture machines and films; manufacture of stationery, paper, cardboard boxes, bags, or wallpaper; and bookbinding. [*Group* 40 *am'd by L.* 1916, *ch.* 622.]

[1] Word "engraving," inserted by L. 1916, ch. 622.

[2] Words "manufacture of moving picture machines and films," inserted by L. 1916, ch. 622.

Group 41. The operation, otherwise than on tracks, on streets, highways, or elsewhere of cars, trucks, wagons or other vehicles and rollers and engines, propelled by steam, gas, gasoline, electric, mechanical or other power or drawn by horses or mules; [1]life saving stations and lifeguards; [2]public garages, livery, boarding or sales stables; movers of all kinds; [3]operation of hand trucks; transportation of goods on rollers; manufacture and operation of aeroplanes or other air craft. [*Group* 41 *am'd by L.* 1916, *ch.* 622; *and L.* 1917, *ch.* 705.]

[1] Words "life saving stations and lifeguards," inserted by L. 1917, ch. 705.

[2] Words "public garages, livery, boarding or sales stables; movers of all kinds," inserted by L. 1916, ch. 622.

[3] Words "operation of hand trucks . . . air craft,,, added by L. 1917, ch. 705.

The *business* of operating vehicles is covered by this group; so that accidents to the following employees are compensatable: a stableman who does no driving: Costello v. Taylor, 217 N. Y. 179; a driver putting his horse in its stall: Smith v. Price, 168 App. Div. 421; a helper on an automobile truck chasing mischievous boys: Hendricks v. Seeman Bros., 170 App. Div. 133; an expressman leaving his vehicle to deliver a package: Miller v. Taylor, 173 App. Div. 865; a taxicab starter slipping on a hotel stairway: David v. Town Taxi Co., S. D. R., vol. 7, p. 464; 175 App. Div. 958; and a driver helping to fix a hand elevator used by him to deliver his load into a basement: Kasper v. Clark & Wilkins Co., S. D. R., vol. 7, p. 454; 175 App. Div. 958.

A driver of a meat wagon who had put up his horse several hours before and was injured while making deliveries afoot was denied compensation: Newman v.

Newman, 169 App. Div. 745; 218 N. Y. 325; also a driver of a florist wagon injured while adjusting a customer's window box: Glatzl v. Stumpp, S. D. R., vol. 6, p. 397; 141 App. Div. 901; 220 N. Y. 71 (award reversed by Court of Appeals with opinion). Compare note on incidentalness under § 3, subd. 7.

Elevators are not vehicles within the purview of this group: Wilson v. Dorflinger & Sons, 218 N. Y. 84; but are covered by the amendment to group 22 effected by L. 1916, ch. 622. Hand trucks were not covered by this group previously to its amendment by L. 1917, ch. 705: Holtz v. Greenhut & Co., 175 App. Div. 878. Moving a threshing machine from place to place is not farming but operation of a vehicle: White v. Loades, —— App. Div. ——, May 2, 1917; compare Lindebauer v. Weiner, 94 Misc. 612. The question whether snow conveyors or scrapers are vehicles is pending in the Appellate Division (June, 1917) upon appeal: Berg v. Hetzler Bros., Bul., vol. 2, p. 50.

An employer cannot stand in the relation of the third party to his employee driver making a delivery from one place to another: Winter v. Doelger Brewing Co., 95 Misc. 150; 175 App. Div. 796.

Injury while operating a vehicle for an employer engaged in a non-hazardous occupation for gain is compensatable: Mulford v. Pettit & Sons, 175 App. Div. 958; 220 N. Y. 540; Glatzl v. Stumpp, 220 N. Y. 71.

The Commission, in a recent ruling, awarding compensation to a traveling salesman injured while operating an automobile, has taken note of the new definition of an employee in § 3, subd. 4, as revised by L. 1916, ch. 622: Gurnett v. Ross Co., Bul., vol. 2, p. 126; compare Sickles v. Ballston R. S. Co., 171 App. Div. 108; McDermott v. Ingersoll & Bro., S. D. R., vol. 2, p. 45; affirmed by Appellate Division, May 2, 1917; Benjamin v. Rosenberg, Bul., vol. 2, p. 126.

An injury is compensatable, though the employee is using his own vehicle: Kingsley v. Donovan, S. D. R., vol. 3, p. 367; 169 App. Div. 828.

Group 42. Stone cutting or dressing; marble works; manufacture of artificial stone; steel building and bridge construction [1]or repair; installation or repair of elevators, fire escapes, boilers, engines or heavy machinery; brick-laying, tile-laying, mason work, stone-setting, concrete work, plastering; and manufacture of concrete blocks; structural carpentry; painting, [2]papering, picture hanging, glazing, decorating or renovating; sheet metal work; roofing; construction, repair and demolition of buildings, [3]bridges [4]and other structures; [5]blasting; maintenance and care of buildings; salvage of buildings or contents; plumbing, sanitary [6]lighting or heating [7]installation or repair; installation and covering of pipes or boilers; [8]junk dealers. [*Group* 42 *am'd by L.* 1916, *ch.* 622; *and L.* 1917, *ch.* 705.]

[1] Words "or repair," inserted by L. 1916, ch. 622.

[2] Words "papering, picture hanging, glazing," inserted by L. 1916, ch. 622.

[3] Word "and," stricken out by L. 1916, ch. 622.

[4] Words "and other structures; salvage of buildings or contents," inserted by L. 1916, ch. 622.

[5] Words "blasting; maintenance and care of buildings," inserted by L. 1917, ch. 705.

[6] Word "lighting," inserted by L. 1916, ch. 622.

[7] Words "installation or repair" substituted for word "engineering," by L. 1916, ch. 622.

[8] Words "junk dealers," added by L. 1916, ch. 622.

A painter by trade, injured while painting a farmer's barn, was denied compensation: McComsey v. Simmons, S. D. R., vol. 7, p. 433.

Hanging pictures is not "decorating": Grasell v. Brodhead, 175 App. Div. 874.

Installation of water tanks is not "installation of . . . boilers, engines or heavy machinery": Maloney v. Levy & Gilliland Co., 176 App. Div. 470.

Compare note on the Bargey, Schmidt and other carpentry cases under § 3, subd. 5, following.

The Appellate Division has affirmed an award to a handy man of a real estate

company injured while fitting glass into a partition: Bredow v. Naughtin & Co., S. D. R., vol. 8, p. 437; 175 App. Div. 958.

The Commission has awarded compensation to an apartment house superintendent, a plumber by trade, injured while fixing a radiator: Unger v. Supreme Realty Co., S. D. R., vol. 9, p. 343.

Group 43. Any employment enumerated in the foregoing groups and carried on by the state or a municipal corporation or other subdivision thereof, notwithstanding the definition of the term "employment" in subdivision five of section three of this chapter. [*Group* 43 *added by L.* 1916, *ch.* 622.]

Compare § 3, subds. 3, 5.

Contracts for public work must "contain a stipulation that the same shall be void and of no effect unless the person or corporation making or performing the same shall secure compensation for the benefit of, and keep insured during the life of said contract, such employees, in compliance with the provisions of said law." L. 1916, ch. 478.

For history of this provision compare Attorney-General's opinions and the case of Allen v. State of New York: Special Bulletin, No. 81, pp. 126-133.

Group 44. Employment as a keeper, guard, nurse or orderly in a prison, reformatory, insane asylum or hospital maintained or operated by the state or municipal corporation or other subdivision thereof, notwithstanding the definitions of the terms "employment," "employer" or "employee" in subdivision five of section three of this chapter. [*Group* 44 *added by L.* 1917, *ch.* 705.]

[1]Any employer not carrying on one of the employments enumerated in this section, or who carrying on one of such employments has in his employ an employee not included within the term "employee" as defined by section three of this chapter, and the employees of any such employer may, by their joint election, elect to become subject to the provisions of this chapter in the manner hereinafter provided. Such election on the part of the employer shall be made by posting notices thereof about the place where the workmen are employed, in a manner to be prescribed by rules to be adopted by the commission, and by filing with the commission a written statement, in a form to be prescribed by the commission, to the effect that he accepts the provisions of this chapter and that he adopts subject to the approval of the commission one of the methods of securing compensation to his employees prescribed in section fifty of this chapter which, when so filed with and approved by the commission as to form and method of securing compensation shall operate to subject him to the provisions of this chapter and of all acts amendatory thereof for the period of one year from the date of such approval, and thereafter without further act on his part for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file with the commission a notice in writing that he withdraws his election.

Any employee in the service of any such employer shall be deemed to have accepted, and shall be subject to the provisions of this chapter and any act amendatory thereof, if, at the time of the accident for which liability is claimed, the employer charged with such liability has not withdrawn his election and the employee shall not at the time of entering into his contract of hire have given to his employer notice in writing that he elects not to be

[1] Remainder of section added by L. 1916. ch. 622.

subject to the provisions of this chapter and filed a copy thereof with the commission, or in the event that such contract for hire was made in advance of the election of the employer, such employee shall not have given to his employer and filed with the commission within twenty days after such election notice in writing that he elects not to be subject to such provisions.

A minor employee shall be deemed sui juris for the purpose of making such an election.

The rights and remedies, benefits and liabilities of an employer or employee so electing to become subject to the provisions of this chapter shall thereupon become the same as they would have been had they been engaged in one of the occupations or employments enumerated herein and the words employer or employee wherever they appear in this chapter shall be construed as including an employer or employee who has so elected to become subject to its provisions. [*Section* 2 *am'd by L.* 1916, *ch.* 622.]

§ 3. **Definitions.**—As used in this chapter, 1. "Hazardous employment" means a work or occupation described in section two of this chapter.

2. "Commission" means the state [1]industrial commission, as constituted by this chapter. [*Subd.* 2 *am'd by L.* 1916, *ch.* 622.]

[1] Word "industrial" substituted for words "workmen's compensation," by L. 1916, ch. 622.

3. "Employer," except when otherwise expressly stated, means a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation, employing workmen in hazardous employments [1]including the state and a municipal corporation or other political subdivision thereof. [*Subd.* 3 *am'd by L.* 1914, *ch.* 316.]

[1] Words "including the state and" substituted for words "but does not include the state or," by L. 1914, ch. 316.

Numerous accidents involve doubt as to which of two or more employers ought to pay the compensation. In the leading case of Dale v. Saunders Bros., 171 App. Div. 528; 218 N. Y. 59, the Appellate Division held that the fact that the special employer might be liable for compensation did not absolve the general employer and the Court of Appeals held that the question whose employee the injured person was belonged under § 20 solely to the Commission as a matter of fact, the courts not having jurisdiction. Other court decisions are: Dale v. Hual Construction Co., S. D. R., vol. 9, p. 282; 175 App. Div. 284; Gimber v. Kane Co., 171 App. Div. 958; Hadden v. Stanton, S. D. R., vol. 9, p. 294; 177 App. Div. ——; Nolan v. Cranford Co., S. D. R., vol. 4, p. 337; 171 App. Div. 959; 219 N. Y. 581; Peake v. Lakin, S. D. R., vol. 9, p. 290; 176 App. Div. 917; —— N. Y. ——, May 8, 1917; Sullivan v. Preston, S. D. R., vol. 10, p. 566; 177 App. Div. 110, March 7, 1917; Wood v. Tupper Lake Chemical Co., S. D. R., vol. 9, p. 372; —— App. Div. ——, May 2, 1917; and De Noyer v. Cavenaugh, S. D. R., vol. 10, p. 599; —— App. Div. ——, March 21, 1917; —— N. Y. ——, July 11, 1917.

In a unique ruling the Commission distributed responsibility for payment of an award among fifteen different employing firms: Sayers v. Ogdensburg Power & Light Co., *et al.*, S. D. R., vol. 8, p. 393. Other Commission rulings decisive of the employer question are: Benjamin v. Rosenberg, Bul., vol. 2, p. 126; Dissosway v. Jallade, S. D. R., vol. 7, p. 449; Galelli v. Magnesite Products Co., S. D. R., vol. 7, p. 416; Landrigan v. Cochran, S. D. R., vol. 6, p. 310; Liebenberg v. Rosenthal, Bul., vol. 2, p. 89; Norman v. Empire Lighterage & Wrecking Co., S. D. R., vol. 2, p. 480; Renda v. Occuizzo, S. D. R., vol. 10, p. 581; Bul., vol. 2, p. 46; Sala v. Martorella & Giannesi, S. D. R., vol. 7, p. 378; and Vance v. Frazee & Co., Bul., vol. 2, p. 103.

4. "Employee" means a person [1]engaged in one of the occupations enumerated in section two or who is [2]in the service of an employer [3]whose principal business is that of carrying on or conducting [4]a hazardous employment upon the premises or at the plant, or in the course of his employment away from the plant of his employer; and shall not include farm laborers or domestic servants. [*Subd. 4 am'd by L.* 1916, *ch.* 622.]

[1] Words "engaged in one of the occupations enumerated in section two or," inserted by L. 1916, ch. 622.

[2] Words "engaged in a hazardous employment," stricken out by L. 1916, ch. 622.

[3] Words "whose principal business is that of," inserted by L. 1916, ch. 622.

[4] Words "a hazardous employment" substituted for words "the same," by L. 1916, ch. 622.

In cases of accidental injury to employees while coming to or leaving work, the courts construe the term "engaged" in this subdivision with the term "arising out of" in subdivision seven following; as a general rule such injuries, in order to be compensatable, must occur on the employer's premises and must occur within reasonable time and without intervening pursuit other than the employment; court opinions denying compensation in such cases have been handed down in Devoe v. N. Y. State Rys., 169 App. Div. 472; 218 N. Y. 318; Berg v. Great Lakes Dredge & Dock Co., 173 App. Div. 82; McCabe v. Brooklyn Heights R. R. Co., S. D. R., vol. 8, p. 407; 177 App. Div. 107, Jan. 9, 1917; Pope v. Merritt & Chapman Derrick & Wrecking Co., S. D. R., vol. 10, p. 587; 177 App. Div. 69; and Ames v. N. Y. Central R. R. Co., S. D. R., vol. 9, p. 393; —— App. Div. ——, May 2, 1917; for an award to an employee injured while quitting his employer's premises, affirmed by the Appellate Division with opinion, compare Kiernan v. Friestedt Underpinning Co., S. D. R., vol. 5, p. 390; 171 App. Div. 539; for similar awards affirmed without opinion, DiPaolo v. Crimmins Contracting Co., S. D. R., vol. 5, p. 428; 173 App. Div. 988; 219 N. Y. Rep. 580; Foley v. Bretton Hall Co., S. D. R., vol. 4, p. 339; 172 App. Div. 914; Gray v. DeJong, S. D. R., vol. 5, p. 404; 173 App. Div. 922; Caccavano v. N. Y., Ontario & Western R. R. Co., S. D. R., vol. 6, p. 380; 174 App. Div. 900; and Countryman v. Neuman, S. D. R., vol. 7, p. 421; 174 App. Div. 900; the Commission has expressly stated the principles applicable to cases of coming to, or quitting work, in Hotaling v. Standard Oil Co. of N. Y., S. D. R., vol. 6, p. 308; and DiPaolo v. Crimmins Contracting Co., S. D. R., vol. 5, p. 428; and has further illustrated them in Diciaiulo v. Kerbaugh, S. D. R., vol. 1, p. 424; Bennett v. Russell & Sons Co., S. D. R., vol. 6, p. 403; Smith v. Gold, S. D. R., vol. 9, p. 376; Campanella v. Stola Construction Co., S. D. R., vol. 9, p. 385; Liberatore v. Kelly Construction Co., S. D. R., vol. 10, p. 574; Lee v. Smith & Sons Co., S. D. R., vol. 10, p. 584; and McGuire v. Brooklyn Heights R. R. Co., S. D. R., vol. 10, p. 631.

The courts have been called upon to determine the compensativness of accidental injuries to watchmen employed by employers carrying on the employments covered by the workmen's compensation law: the Appellate Division has drawn distinctions granting compensation to certain watchmen of such employers and denying it to others; thus, it has affirmed awards to watchmen in White v. N. Y. C. & H. R. R. R. Co., 169 App. Div. 903; Sorge v. Aldebaran Co., 171 App. Div. 959; Hellman v. Manning Sandpaper Co., 176 App. Div. 127; Kobyra v. Adams, 176 App. Div. 43; and Riedel v. Mallory Steamship Co., 176 App. Div. 923; but has reversed awards in Oberg v. McRoberts & Co., 175 App. Div. 1; Fogarty v. National Biscuit Co., 175 App. Div. 729; and Kehoe v. Consolidated Telegraph and Electrical Subway Co., 176 App. Div. 84; the Court of Appeals has ignored these distinctions in its opinion of May 8, 1917, in which it reverses the Appellate Division's decision in the Fogarty case and places the compensation of watchmen upon the broad ground of incidentalness (221 N. Y. 20).

The Appellate Division has denied compensation to such outside employees as salesmen, ice harvesters, purchasing agents, process servers, etc.: Aylesworth v. Phoenix Cheese Co., 170 App. Div. 30; Sickles v. Ballston R. S. Co., 171 App. Div. 108; Mandel v. Steinhardt & Bros., 173 App. Div. 515; Lyon v. Windsor & Davis, 173 App. Div. 377; Brown v. Richmond Light & R. R. Co., 173 App. Div. 432; but the Commission in its recent rulings in the similar cases of Rzepczyriski v.

Manhattan Brass Co., Bul., vol. 2, p. 91; Gurnett v. Ross Co., Bul., vol. 2, p. 126; and Gifford v. Patterson, Bul., vol. 2, p. 129, has taken note of the new definition of an employee in this subdivision as revised by L. 1916, ch. 622.

A tailor injured by his scissors while doing piece work away from the plant of his employer received compensation: Fiocca v. Dillon, S. D. R., vol. 7, p. 399; 175 App. Div. 957.

The phrase "away from the plant" is a basis for grant of compensation in extraterritorial cases; the Court of Appeals has affirmed awards for injuries occurring beyond the state's bounds in Post v. Burger & Gohlke, 168 App. Div. 403; 216 N. Y. 544; Spratt v. Sweeney & Gray Co., 168 App. Div. 403; 216 N. Y. 763; Klein v. Stoller & Cook Co., 175 App. Div. 958; 220 N. Y. Rep. ——; and Fitzpatrick v. Blackall and Baldwin Co., —— App. Div. ——; 220 N. Y. Rep. ——, but compare Gardner v. Horseheads Construction Co., S. D. R., vol. 4, p. 437; 171 App. Div. 66; and Lloyd v. Power Specialty Co., S. D. R., vol. 7, p. 409, extra-territorial cases in which the Appellate Division and the Commission have denied compensation notwithstanding the Court of Appeals decisions; the Commission's statement of facts in the award cases of Klein and Fitzpatrick, affirmed by the Court of Appeals without opinion, may be consulted in S. D. R., vol. 8, pp. 440, 456; award for an injury incurred in Canada has been unanimously affirmed by the Appellate Division in Kenhedy v. Kennedy Mfg. and Engineering Co., S. D. R., vol. 7, p. 383; Bul., vol. 1, no. 8, p. 8; 177 App. Div. 56 (reargument granted May 17, 1917); compare also Jenkins v. Hogan & Sons, S. D. R., vol. 9, p. 380; 177 App. Div. 41.

The converse of extra-territorial effect of the New York workmen's compensation law is extra-territorial effect of the workmen's compensation laws of adjoining or other states relative to accidents occurring in New York; if an employee of an employer insured under the New Jersey or Massachusetts compensation law crosses into New York and receives an injury, will the New York courts recognize and apply the New Jersey or Massachusetts compensation law to the exclusion of an action for negligence? A number of cases involving the question have been variously acted upon by the Supreme Court; compare generally Schweitzer v. Hamburg-American Line, 78 Misc. 448; Albanese v. Stewart, 78 Misc. 581; Pensabene v. Auditore Co., 78 Misc. 538; 155 App. Div. 368; Wasilewski v. Warner Sugar Refining Co., 87 Misc. 156; Lehmann v. Ramo Films Co., 92 Misc. 418; McCarthy v. McAllister Steamboat Co., 158 N. Y. Supp. 563; Verdicchio v. McNab & Harlin Mfg. Co., 164 N. Y. Supp. 290; Barnhardt v. American Concrete Steel Co., Bul. of Gen'l Contractors Ass'n, vol. 7, p. 224; Banchiere v. American Brass Co., Idem, vol. 7, p. 223; no case appears to have reached the Court of Appeals; the subject is presented in Bulletin No. 203 of the U. S. Bureau of Labor Statistics, pp. 62, 220.

Farm laborers are defined in Coleman v. Bartholomew, 175 App. Div. 122, where an employee was injured while slating a barn roof; the Commission denied compensation to a painter injured while painting a farm building: McComsey v. Simmons, S. D. R., vol. 7, p. 433.

Distinction between an independent contractor and an employee is made in Rheinwald v. Builders' Brick & Supply Co., S. D. R., vol. 1, p. 417; 168 App. Div. 425; S. D. R., vol. 7, p. 440; 174 App. Div. 935; Powley v. Vivian & Co., S. D. R., vol. 3, p. 366; 169 App. Div. 170; McNally v. Diamond Mills Paper Co., S. D. R., vol. 8, p. 431; vol. 9, p. 352; —— App. Div. ——, May 2, 1917; and Kramer v. Schalk, S. D. R., vol. 8, p. 444. Suggestive details relative to the customary relations of employer and employee in the timber cutting industry are given in Sullivan v. Preston, S. D. R., vol. 10, p. 566.

In several instances the Appellate Division has sustained awards to officers or stockholders injured while working for their corporations as ordinary employees: Bowne v. Bowne Co., S. D. R., vol. 9, p. 388; 176 App. Div. 131; Howard v. Howard, S. D. R., vol. 9, p. 355; —— App. Div. ——, Jan. 12, 1917; Kennedy v. Kennedy Mfg. & Engineering Co., S. D. R., vol. 7, p. 383; Bul., vol. 1, no. 8, p. 8; 177 App. Div. 56; Reddy v. National Excavating Co., S. D. R., vol. 10, p. 621; —— App. Div. ——, May 2, 1917; the Court of Appeals, reversing one of these, has declared that the workmen's compensation law does not obliterate the distinction between the higher executive officers of a corporation and its workmen: Bowne v. Bowne, 221 N. Y. 28; however, an amendment of L. 1916, ch. 622, adding § 54, subd. 6, provides a voluntary plan of insurance for employers who perform labor incidental to their occupations.

An employee's status relative to compensation is not affected by false statements made by him to obtain his employment: Kenny v. Union Ry. Co., 166 App. Div. 497; nor by violation of law by him at time of his injury: McDermott v. Ingersoll & Bros., Bul., vol. 2, p. 45; S. D. R., vol. 11, p. ——; —— App. Div. ——, May 2, 1917; nor ordinarily by injury while disobeying orders of his employer: Moell v. Wilson, S. D. R., vol. 9, p. 310; Lee v. Smith & Sons Co., S. D. R., vol. 10, p. 584.

5. "Employment" includes employment only in a trade, business or occupation carried on by the employer for pecuniary gain, [1]or in connection therewith, [2]except where the employer and his employees have by their joint election elected to become subject to the provisions of this chapter as provided in section two. [*Subd.* 5 *am'd by L.* 1916, *ch.* 622; *and L.* 1917, *ch.* 705.]

[1] Words "or in connection therewith," inserted by L. 1917, ch. 705.

[2] Words "except where . . . section two," added by L. 1916, ch. 622.

On the ground that the employers were not carrying on the carpentry business for pecuniary gain, compensation for accidental injury has been denied to a carpenter casually employed to put a partition in a macaroni factory: Bargey v. Massaro Macaroni Co., 170 App. Div. 103; 218 N. Y. 410; to an apartment house superintendent planing the top of a door: Schmidt v. Berger, S. D. R., vol. 7, p. 432; 175 App. Div. 957; 221 N. Y. 26; to a workman casually employed to roof a farmer's barn: Coleman v. Bartholomew, 175 App. Div. 122; to a property man lowering stage furniture through a trap door: Adler v. Thomashefsky Theatre Co., S. D. R., vol. 9, p. 348; and to an employee repairing the work bench of a dealer in sausage casings: Lupke v. Simon, Bul., vol. 2, p. 45.

Accidental injury, however, to a regularly employed handy man of a wholesale drug establishment while building a shelf is compensatable: Larsen v. Paine Drug Co., 169 App. Div. 838; 218 N. Y. 252; compare also the opinion of the Court of Appeals in Mulford v. Pettit & Sons, 220 N. Y. 540, and the Commission's opinions in Geller v. Republic Novelty Works, Bul., vol. 2, p. 104, and Caine v. Greenhut & Co., Bul., vol. 2, p. 125.

In Mihm v. Hussey, 169 App. Div. 742, the case of a wholesale merchant storing his own goods, the court held that storage other than for hire was not carried on for pecuniary gain. The effect of this decision as a precedent appears to be met specifically by the amendment of L. 1916, ch. 622, to § 2, gr. 29, inserting the words "of all kinds and storage for hire" and generally by the above amendment of L. 1917, ch. 705, to this subdivision, inserting the words "or in connection therewith."

Organizations not primarily created for pecuniary gain may nevertheless bring themselves within the law by engaging in profit-yielding enterprises, as illustrated by Uhl v. Hartwood Club, S. D. R., vol. 9, p. 360; Bul., vol. 2, p. 27; 177 App. Div. 41; affirmed by Court of Appeals, July 11, 1917; and Kaempfer v. Automobile Club of America, S. D. R., vol. 10, p. 591. Accidental injury to an employee in experimental work carried on with a view to pecuniary profit is compensatable: Galelli v. Magnesite Products Co., S. D. R., vol. 7, p. 416.

Besides the exception of joint electors from the pecuniary gain limitation, as made in this subdivision, § 2, gr. 43, excepts state and municipal employees.

6. "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this chapter, and includes funeral benefits provided therein.

Compare §§ 15 and 16.

7. "Injury" and "personal injury" mean only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally and unavoidably result therefrom.

According to definition approved by the Appellate Division and the Court of Appeals, an accident is "an unlooked for mishap or an untoward event which is not expected or designed," being limited so that "an act done deliberately and wilfully by a third party may be an accident from the view-point of employer and employee." Loss of vision due to strong light is not an accident: Surfass v. American LaFrance Fire Engine Co., Files of Commission. Claim No. 55428; neither is

swelling of an elbow due to constant twisting of cans: Tracy v. DeLaval Separator Co., S. D. R.. vol. 7, p. 385. The merest scratch or cut may be an accident: Henry v. Levor & Co., S. D. R., vol. 6, p. 388; Eldridge v Endicott, Johnson & Co., S. D. R., vol. 8, p. 445; Hiers v. Hull Co.; S. D. R., vol. 8, p. 486; —— App. Div. ——, May 2, 1917; also frostbite: Days v. Trimmer & Sons, S. D. R., vol. 9, p. 285; 176 App. Div. 124. The definition is discussed in Naud v. King Sewing Machine Co., 95 Misc. 676; James v. Witherbee, Sherman & Co., S. D. R., vol. 2, p. 483; Yume v. Knickerbocker Portland Cement Co., S. D. R., vol. 3, p. 353; Heitz v. Ruppert, 218 N. Y. 148; and Fowler v. Risedorph Bottling Co., 175 App. Div. 224.

The Commission must be satisfied that an accident has happened before the presumptions established by § 21 can arise: Hyland v. Winant, S. D. R., vol. 6, p. 304. To trace disease, internal injury or unwitnessed death to accident is often difficult.

The phrase "arising out of" broadens the coverage of the hazardous employments enumerated in § 2 to include work and occupations incidental to them. Court decisions have not yet (June, 1917) determined the effect of the insertion of the phrase "principal business" in § 3, subd. 4, above, by L. 1916, ch. 622. Distinction between incidentalness and non-incidentalness has been drawn, with citation of precedents, in Newman v. Newman, 169 App. Div. 745; and Gleisner v. Gross & Herbener, 170 App. Div. 37. Important cases illustrative of the principle are referred to in the notes on operation of vehicles, § 2, gr. 41, and on employees coming to, or leaving work, watchmen and salesmen, § 3, subd. 4.

In the following cases the accidental injuries have been held incidental: injury while building a shelf: Larsen v. Paine Drug Co., 169 App. Div. 838; 218 N. Y. 252; injury while seeking shelter from storm: Moore v. Lehigh Valley R. R. Co., 169 App. Div. 177; 217 N. Y. Rep. 627; injury from contact with poison ivy: Plass v. Central New England Ry. Co., 169 App. Div. 826; injury due to assault connected with dispute about employment, methods of work, etc.: Yume v. Knickerbocker Portland Cement Co., S. D. R., vol. 3, p. 353; 169 App. Div. 905; 216 N. Y. 653; Harnett v. Steen Building Co., 169 App. Div. 905; 216 N. Y. 101; Heitz v. Ruppert Brewery Co., 171 App. Div. 961; 218 N. Y. 148; James v. Witherbee, Sherman & Co., S. D. R., vol. 2, p. 483; injury while going to rescue of another workman: Waters v. Taylor Co., 170 App. Div. 942; 218 N. Y. 248; Martucci v. Hills Bros. Co., 171 App. Div. 370; injury due to embrace of another employee: Markell v. Green Felt Shoe Co., S. D. R., vol. 8, p. 487; 175 App. Div. 958; affirmed by Court of Appeals, May 8, 1917; injury while inspecting machinery: Benton v. Frazier, S. D. R., vol. 5, p. 392; 172 App. Div. 913; 219 N. Y. 210; injury while unloading beef from a car: Meyer v. Morris & Co., S. D. R., vol. 6, p. 334; 173 App. Div. 990; 219 N. Y. Rep. 647; injury while attending a call of nature: Cino v. Morton & Gorman, S. D. R., vol. 5, p. 387; 172 App. Div. 917; Putnam v. Murray, S. D. R., vol 6, p. 355; 174 App. Div. 720; DeFilippis v. Falkenberg, S. D. R., vol. 4, p. 375; 170 App. Div. 153; reversed on other grounds, 219 N. Y. 581; injury due to slipping or tripping on stairs or floors: Leslie v. O'Connor & Richman, S. D. R., vol. 5, p. 383; 173 App. Div. 988; Naro v. Rueckheim Bros. & Eckstein, S. D. R., vol. 7, p. 484; 175 App Div. 958; injury while looking at a ticket on a piece of cloth: Berliner v. Ritchie & Cornell, S. D. R., vol. 4, p. 446; 172 App. Div. 913; injury from accidental discharge of a revolver: Bopp v. Eclipse Box & Lumber Co., Bul., vol. 2, p. 65; injury while watching a fire: Rzepczniski v. Manhattan Brass Co., Bul., vol. 2 p. 91; unanimously affirmed by the Appellate Division, July 3, 1917; and injury while removing a window shade: Tracy v. Mertens, Bul., vol. 2, p. 102.

In the following cases the accidental injuries have been held not incidental: injury due to sportive act or horseplay: DeFilippis v. Falkenberg, S. D. R., vol. 4, p. 375; 170 App. Div. 153; 219 N. Y. 581; injury due to poison taken by mistake: O'Neil v. Carley Heater Co., S. D. R., vol. 6, p. 314; 173 App. Div. 922; 218 N. Y. 414; injury due to ammonia thrown in face by mistake; Saenger v Locke, S. D. R., vol. 9, p. 330; 175 App. Div. 963; 220 N. Y. 556; injury due to assault not connected with work; Cowen v. Cowen's New Shirt Laundry, S. D. R., vol. 8, p. 481; 176 App. Div. 924; Griffin v. Roberson & Son, S. D. R., vol. 9, p. 303; 176 App. Div. 6; injury while swimming as diversion from work; McManus v. Lord & Taylor, S. D. R., vol. 6, p. 393; injury while procuring a newspaper; McGuire v. Brooklyn Heights R. Co., Bul., vol. 2, p. 30; and injury while rescuing a coemployee's slipper; Holmes v. U. S. Printing Co., Bul,. vol. 2, p. 93.

The subtle connections of accidental injury with ensuing infection or disease would seem to offer a wide and varied field for controversy as to facts. The courts, by § 20, are prohibited from review of facts. They have held that they can take cognizance of evidence relative to a given case only where there are no facts, no reasonable evidence, no evidence of probative force. Compare note on evidence under § 23. Therefore, the issues of such disease cases as have been adjudicated by the courts have turned upon evidence rather than upon disease *per se*. Thus, in Carroll v. Knickerbocker Ice Co., 169 App. Div. 450; 218 N. Y. 435, the issue was hearsay evidence rather than delirium tremens; and in Bloomfield v. November, S. D. R., vol. 5, p. 385; 172 App. Div. 917; 219 N. Y. 374, notice of the accident rather than ensuing infection. Accidents due solely to disease are not compensatable: Collins v Brooklyn Union Gas Co., S. D. R., vol. 4, p. 449; 171 App. Div. 381. In a multitude of cases, the Commission, without reversal by the courts, has held that not only disease resulting or ensuing from accident but disease aggravated, accelerated, developed or hastened by accident is compensatable. A simple illustration of accelerated disease is the case of the employee who, being afflicted with heart defects, known or unknown, incurs a heavy strain or other accident which causes sudden death or continuous disability through heart failure or weakness: Uhl v. Guarantee Construction Co., S. D. R., vol. 8, p. 479; 174 App. Div. 571; Hackford v. Veeder & Brown, S. D. R., vol. 8, p. 472; 176 App. Div. 924; and LaFleur v. Wood, S. D. R., vol. 8, p. 405, affirmed by Appellate Division, May 2, 1917. The following cases that have reached the courts also illustrate aggravation of disease or development of unknown latent disease: cancer revealed by a fall from a wagon: Blatt v. Schonberger & Noble, S. D. R., vol. 7, p. 388; 176 App. Div. 924; typhoid fever developed by a fall from a wagon: Banks v. Adams Express Co., S. D. R., vol. 7, p. 471; 176 App. Div. 916; sarcoma of the bone aggravated by a blow: Prokopiak v. Buffalo Gas Co., S. D. R., vol. 7, p. 390; 176 App. Div. 128; a diseased left eye injured by an emery particle: Blaes v. Bliss Co., S. D. R., vol. 9, p. 288, affirmed by Appellate Division, March 7, 1917; a diseased appendix exacerbated by a fall down a canal bank: Lindquest v. Holler & Shephard, S. D. R., vol. 10, p. 607; affirmed by Appellate Division, May 2, 1917; and diseased adnexa inflamed by heavy lifting: Owens v N. Y. Mills Corp., S. D. R., vol. 9, p. 367; affirmed by Appellate Division, May 2, 1917; the following Commission awards are worthy of note: heart disease hastened by overwork and stair climbing: McMurray v. Little & Ives Co., S. D. R., vol. 3, p. 395; or by a blow in the abdomen: Cook v. N. Y. Central & H. R. R. R. Co., S. D. R., vol. 8, p. 469; tuberculosis accelerated by bruising of limbs: Nelson v. Campagnie G. T. S. S. Co., Bul., vol. 2, p. 44; S. D. R., no. 64, p. 118; a bunion or a carbuncle "bunked" with resultant poisoning of system: Whalen v. N. Y. & Cuban Mail S. S. Co., Bul. of Gen. Contractors Assn, March, 1917, p. 64; Caine v. Greenhut & Co., Bul., vol. 2, p. 125.

The following court cases illustrate diseases resulting from accident: anthrax: Hiers v. Hull Co., S. D. R., vol. 8, p. 486; affirmed by Appellate Division, May 2, 1917; apoplexy and degeneration of the brain: Fowler v. Risedorph Bottling Co., S. D. R., vol. 8, p. 404; 175 App. Div. 224; delirium tremens: Sullivan v. Industrial Engineering Co., S. D. R., vol. 6, p. 401; 173 App. Div. 65; Dunn v. West End Brewing Co., S. D. R., vol. 5, p. 380; 174 App. Div. 900; tuberculosis: Rist v. Larkin & Sangster, S. D. R., vol. 5, p. 381; 171 App. Div. 71; bronchitis or congestion of lungs: Plass v. Central N. E. R. R. Co., S. D. R., vol. 4, p. 331; 169 App. Div. 826; tetanus: Putnam v. Murray, S. D. R., vol. 6, p. 355, vol. 7, p. 407; 174 App. Div. 720. For a case of insanity resulting from accident, compare McMahon v. Interborough R. T. Co., S. D. R., vol. 5, pp. 371, 374; for additional anthrax cases: Henry v. Levor & Co., S. D. R., vol. 6, p. 388; Eldridge v. Endicott, Johnson & Co., S. D. R., vol. 8, p. 445; for infection cases: Bloomfield v. November, S. D. R., vol. 5, p. 385; 172 App. Div. 917; 219 N. Y. 374; Leslie v. O'Connor & Richman, S. D. R., vol. 5, p. 383: 173 App. Div. 988; 220 N. Y. Rep. ——; and Staufenberg v. Muller & Son, S. D. R., vol. 10, p. 563; affirmed by Appellate Division, May 2, 1917.

The Commission, on ground of the lack of evidence, has denied benefits to widows for the deaths of their husbands from the following diseases: blood poisoning claimed to have been due to rupture of the mucus membrane inside of the nose, permitting the entrance of germs, the rupture having been caused by an accidental blow from a container, S. D. R., vol. 6. p. 336: tubercular trouble claimed to have been hastened by the fracture of a leg, S. D. R., vol. 6, p. 349; intestinal ulcers

claimed to have been caused by crushing of the body against a truck, S. D. R., vol. 6, p. 304; lobar pneumonia claimed to have been due to weakness caused by the amputation of a finger, S. D. R., vol. 6, p. 383; and a paralytic stroke or an embolism claimed to have resulted from severe vibration of a compressed air drill, S. D. R., vol. 7, p. 376.

8. "Death" when mentioned as a basis for the right to compensation means only death resulting from such injury.

9. "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including the reasonable value of board, rent, housing, lodging or similar advantage received from the employer.

For the use of wages as the basis of compensation, see §§ 14, 15, 101, 102, 113.

10. "State fund" means the state insurance fund provided for in article five of this chapter.

11. "Child" shall include a posthumous child a child legally adopted prior to the injury of the employee; [1]and a step-child [2]or acknowledged illegitimate child dependent upon the deceased. [*Subd.* 11 *am'd by L.* 1916, *ch.* 622; *and L.* 1917, *ch.* 705.]

[1] Words "and a step-child dependent upon the deceased," added by L. 1916, ch. 622.

[2] Words "or acknowledged illegitimate child," inserted by L. 1917, ch. 705.

Compare § 16.

Death benefits are awardable to children adopted under Indian tribal laws: Jackson v. Sherman Paper Co., S. D. R., vol. 10, p. 605; and to children begotten after accidents: Crockett v. International Ry. Co., 176 App. Div. 45.

The inclusion of acknowledged illegitimate children by L. 1917, ch. 705, partly offsets the decisions in Bell v. Terry & Tench Co., 177 App. Div. 123, March 7, 1917; and Berger v. Shadboldt Manufacturing Co., S. D. R., vol. 8, p. 460.

12. "Insurance carrier" shall include the state fund, stock corporations or mutual associations with which employers have insured, and employers permitted to pay compensation directly under the provisions of subdivision three of section fifty.

13. "Manufacture," "construction," "operation" and "installation" shall include "repair," "demolition" and "alteration" [1]and shall include all work done in connection with the repair of plants, buildings, grounds and approaches of all places where any of the hazardous employments are being carried on, operated or conducted. [*Subd.* 13 *added by L.* 1916, *ch.* 622; *am'd by L.* 1917, *ch.* 705.]

[1] Remainder of subdivision added by L. 1917, ch. 705.

ARTICLE 2

COMPENSATION

Section 10. Liability for compensation.
11. Alternative remedy.
12. Compensation not allowed for first two weeks.
13. Treatment and care of injured employees.
14. Weekly wages basis of compensation.
15. Schedule in case of disability.
16. Death benefits.
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Section 19. Medical examination.
20. Determination of claims for compensation.
21. Presumptions.
22. Modification of award.
23. Appeals from the commission.
24. Costs and fees.
25. Compensation, how payable.
26. Enforcement of payment in default.
27. Depositing future payments.
28. Limitation of right to compensation.
29. Subrogation to remedies of employee.
30. Revenues or benefits from other sources not to affect compensation.
31. Agreement for contribution by employee void.
32. Waiver agreements void.
33. Assignments; exemptions.
34. Preferences.

§ 10. **Liability for compensation.**— Every employer subject to the provisions of this chapter shall pay or provide as required by this chapter compensation according to the schedules of this article for the disability or death of his employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of his employment, without regard to fault as a cause of such injury, except where the injury is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty. Where the injury is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty, neither the injured employee nor any dependent of such employee shall receive compensation under this chapter.

For decisions interpreting the phrases "arising out of" and "in the course of" compare notes to § 3, subd. 7.

The burden of proving that an accident has been due to intoxication or willful intention to injure rests upon the employer: § 21, subds. 3, 4.

The Commission has ruled relative to disobedience of orders and violation of law as a bar to compensation in McDermott v. Ingersoll & Bros., Bul., vol. 2, p. 45, and Lee v. Smith & Sons Co., S. D. R., vol. 10, p. 584; the Appellate Division unanimously affirmed the McDermott ruling, May 2, 1917.

Cases of intoxication in which the Commission has denied compensation are: Butler v. Sheffield Farms, S. D. R., vol. 6, p. 368, and Minnaugh v. Brooklyn Union Gas Co., S. D. R., vol. 8, p. 446; in Pope v. Merritt & Chapman Derrick & Wrecking Co., S. D. R., vol. 10, p. 587; 177 App. Div. 69, the Appellate Division reversed an award to an employee who was not allowed to go to work because of his intoxicated condition and was drowned while leaving the place of employment. Cases of awards where the injured employees had been drinking are: Carroll v. Knickerbocker Ice Co., 169 App. Div. 450; 218 N. Y. 435; Kiernan v. Friestedt Underpinning Co., S. D. R., vol. 5, p. 390; 171 App. Div. 539; and where the employer claimed evidence of suicide: Ignatowsky v. Berman, S. D. R., vol. 6, p. 326; Riedel v. Mallory Steamship Co., S. D. R., vol. 10, p. 601; and Urban v. Frank & Co., Bul., vol. 2, p. 46. Compensation was denied because of willful attempt to injure another in Griffin v. Roberson & Son, S. D. R., vol. 9, p. 303; 176 App. Div. 6; and Ludwig v. Groh's Sons, S. D. R., vol. 8, p. 426; compare also the close case of Slane v. Cording & Salzman, Bul., vol. 2, pp. 9, 64, S. D. R., no. 66, p. 87, unanimously affirmed by the Appellate Division, July 3, 1917.

§ 11. **Alternative remedy.**— The liability [1]of an employer prescribed by the last preceding section shall be exclusive [2]and in place of any other liability whatsoever, to such employee, his personal representatives, husband, parents, dependents or next of kin, or anyone otherwise entitled to recover damages,

at common law or otherwise on account of such injury or death, except that if an employer fail to secure the payment of compensation for his injured employees and their dependents as provided in section fifty of this chapter, an injured employee, or his legal representative in case death results from the injury, may, at his option, elect to claim compensation under this chapter, or to maintain an action in the courts for damages on account of such injury; and in such an action[3] it shall not be necessary to plead or prove freedom from contributory negligence nor may the defendant[4] plead as a defense that the injury was caused by the negligence of a fellow servant[5] nor that the employee assumed the risk of his employment,[5] nor that the injury was due to the contributory negligence of the employee. [*As am'd by L.* 1914, *ch.* 316; *and L.* 1916, *ch.* 622.]

[1] Words " of an employer," inserted by L. 1916, ch. 622. [2] Words "and in place . . . or death," inserted by L. 1916, ch. 622. [3] Words "it shall . . . nor may," inserted by L. 1914, ch. 316. [4] Words "may not," stricken out by L. 1914, ch. 316. [5] Word "nor" substituted for word "or" by L. 1914, ch. 316.

The exclusiveness of the liability prescribed by § 10 has been upheld by the Court of Appeals in Shanahan v. Monarch Engineering Co., 219 N. Y. 469, in which case the Compensation Law was held to be a bar to an action under § 1902 of the Code of Civil Procedure.

In electing to bring an action for damages, the injured employee must allege that his employer has been negligent: Lindebauer v. Weiner, 94 Misc. 612; Dick v. Knoperbaum, 157 N. Y. Supp. 754.

An employee having elected compensation, the Commission denied his application for leave to withdraw the claim, his intention being to bring an action for damages: Pavia v. Petroleum Iron Works Co., S. D. R., vol. 9, p. 378; the Appellate Division unanimously affirmed the ruling with opinion, May 2, 1917.

For the General Employers' Liability Law, see article 14 of the Labor Law. See also §§ 29 and 53 of the Workmen's Compensation Law; Liability of Railway Companies, Railroad Law, § 64; Damages for Injuries Causing Death, Constitution of New York, Art. 1, § 18; and Code of Civil Procedure, § 1902; and Criminal Liability for Negligence, Penal Law, §§ 1052, 1893.

Relative to penalty for failure to secure compensation §§ 11, 50 and 52 should be read together.

§ 12. **Compensation not allowed for first two weeks.**—No compensation shall be allowed for the first fourteen days of disability, except the benefits provided for in section thirteen of this chapter, [1]provided, however, that in case the injury results in disability of more than forty-nine days the compensation shall be allowed from the date of the disability. [*As am'd by L.* 1917, *ch.* 705.]

[1] Remainder of section added by L. 1917, ch. 705.

§ 13. **Treatment and care of injured employees.**—The employer shall promptly provide for an injured employee such medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus as may be required or be requested by the employee, during sixty days after the injury. If the employer fail to provide the same, the injured employee may do so at the expense of the employer. The employee shall not be entitled to recover any amount expended by him for such treatment or services unless he shall have requested the employer to furnish the same and the employer shall have refused or neglected to do so. All fees and other charges for such treatment and services shall be subject to regulation by the commission as provided in section twenty-four of this chapter, and shall be

limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living.

See also §§ 24, 26.

The wife or other relative of a claimant for compensation, not being a professional or graduate nurse, is not entitled to payment for services in caring for him: Dunham v. Phelan & Sullivan, Bul., vol. 1, no. 9, p. 30.

An injured employee is not entitled to an artificial limb upon demand from his employer: Kunasek v. N. Y. Consolidated Car Co., 176 App. Div. 135.

The employer is not liable for physician's services if the employee has rejected the physician selected by the employer: Keigher v. General Electric Co., 173 App. Div. 207; Junk v. Terry & Tench Co., 176 App. Div. 855.

Where an insurance carrier's physician advised against an operation and an unsuccessful operation resulted in amputation, the employee did not forfeit compensation: Beatty v. McAllister Dry Dock Co., N. Y. State Depts., Weekly Reports, April 14, 1917, p. 819.

The employer is liable if he has had notice that treatment is necessary, even though the injured employee has not requested treatment within sixty days: Morey v. Worden, S. D. R., vol. 2, p. 497.

§ 14. Weekly wages basis of compensation.— Except as otherwise provided in this chapter, the average weekly wages of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation or death benefits, and shall be determined as follows:

1. If the injured employee shall have worked in the employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he shall have earned in such employment during the days when so employed;

2. If the injured employee shall not have worked in such employment during substantially the whole of such year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or in a similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed;

3. If either of the foregoing methods of arriving at the annual average earnings of an injured employee cannot reasonably and fairly be applied, such annual earnings shall be such sum as, having regard to the previous earnings of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment in the same or neighboring locality, shall reasonably represent the annual earning capacity of the injured employee in the employment in which he was working at the time of the accident;

4. The average weekly wages of an employee shall be one-fifty-second part of his average annual earnings:

5. If it be established that the injured employee was a minor when injured, and that under normal conditions his wages would be expected to increase, the fact may be considered in arriving at his average weekly wages.

Wages are defined by § 3, subd. 9; for other wage provisions compare §§ 15, 101, 102, 113.

The phrase "days when so employed" requires computation of average daily wages by dividing the week's pay by five and one-half instead of six where employees have a weekly half holiday; the commission computes compensation of

seven day workers upon a basis of three hundred and thirty-two days: Bul., vol. 1. no. 2, p. 13; no. 10, pp. 38, 41. Compare further vol. 1, no. 1, p. 17; no. 2, p. 3; no. 9, pp. 17-19.

For a case involving the counting of Sunday as a day of disability compare Pirk v. Buffalo Forge Co., S. D. R., vol. 8, p. 492.

Custom tends to fix the average daily wage: Fredenburg v. Empire U. Railways, 168 App. Div. 618.

Subdivision 5 of section 15, following, establishes maximum and minimum limits for the use of the average weekly wages as the basis of compensation under § 15, and concludes with a proviso "that if the employee's wages at the time of injury are less than five dollars per week he shall receive his full weekly wages;" the Commission has interpreted and applied the word "wages," as contained in this proviso, in Morey v. Worden, S. D. R., vol. 2, p. 494.

Determination of average weekly wages is complicated by agreements involving piece work, seasonal work, commissions, winnings, tips, rent, etc. Relative to piece work compare Fiocca v. Dillon, S. D. R., vol. 7, p. 399; 175 App. Div. 957; Cohen v. Rothstein & Pitofsky, 176 App. Div. 35; relative to commissions, Gurnett v. Ross Co., Bul., vol. 2, p. 126; relative to winnings, Dearborn v. Peugeot Auto Import Co., S. D. R., vol. 7, p. 413. The tips of a taxicab driver are part of his wages: Sloat v. Rochester Taxicab Co., S. D. R., vol. 8, p. 498; 177 App. Div. 57; 221 N. Y. ——, May 8, 1917.

Where an employee has two distinct employments, though under the same employer, his wages in the employment in which he was engaged at the time of the accident are the basis of the award: Minniece v. Terry Bros., Bul., vol. 2, p. 42, affirmed by Appellate Division, July 3, 1917.

Determination of the average weekly wages is not reviewable by the courts, if supported by any evidence: Fairchild v. Pa. R. R. Co., 170 App. Div. 135; but the Commission must base its award upon the actual facts: Cohen v. Rothstein & Pitofsky, 176 App. Div. 35.

Instances of awards based on minors' expectation of wage increase are: Kilberg v. Vitch, S. D. R., vol. 4, p. 434; 171 App. Div. 89; Itzikowitz v. Lakner, S. D. R., vol. 5, p. 398; Carkey v. Island Paper Co., S. D. R., vol. 6, p. 321; and Peck v. Onondaga Paper Co., S. D. R., vol. 7, p. 445.

§ 15. Schedule in case of disability.— The following schedule of compensation is hereby established:

1. Total permanent disability. In case of total disability adjudged to be permanent sixty-six and two-thirds per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

For additional limitation of amount compare § 15, subd. 5.

The compensation of an employee who loses any two of the members named in this section by different accidents occurring at different times, *e. g.*, the loss of one hand in 1909 and the loss of the other in 1916, is determined by § 15, subds. 6, 7.

2. Temporary total disability. In case of temporary total disability, sixty-six and two-thirds per centum of the average weekly wages shall be paid to the employee during the continuance thereof, but not in excess of three thousand five hundred dollars, except as otherwise provided in this chapter.

For additional limitation of amount compare § 15, subd. 5.

The Commission's attitude relative to malingering is set forth in Bul., vol. 1, no. 9, pp. 16, 17, 19, 20; compare also Glidder v. Haliver, S. D. R., vol. 6, p. 366.

If the same accident involves temporary total disability on account of one injury and permanent partial disability on account of another, for example, both laceration of a thumb and traumatic amputation of a finger, award may be made for

but one of the two classes of injury, since disability under the New York law means "impairment of earning capacity," not "loss of a member": Marhoffer v. Marhoffer, S. D. R., vol. 8, p. 438; 175 App. Div. 52; reversed by Court of Appeals, May 1, 1917. This decision of the Court of Appeals invalidated numerous consecutive awards made previously; concurrent awards for the two classes of disability had been declared not within the intent of the law in Fredenburg v. Empire U. Rys., 168 App. Div. 618; 170 App. Div. 942.

Where an award was made on account of injury to an eye and after twenty-one weeks the eye became permanently blind, the Commission reviewed the case and made award for loss of the eye under subdivision three less an amount already paid for temporary total disability under subdivision two: Kreppel v. Boyland, S. D. R., vol. 2, p. 489.

Claims for accidents causing hernia, heart dilatation, and strain are frequent under this subdivision; the evidence is often close; awards are sometimes denied as, for example, in Graf v. Brooklyn R. T. Co., S. D. R., vol. 7, p. 381; Silverman v. Zibulsky, S. D. R., vol. 7, p. 434; Fischer v. Stevenson Brewing Co., S. D. R., vol. 10, p. 633; and Sobolewski v. Union Porcelain Works, Bul., vol. 2, p. 128. An injury, to be compensatable, need not be "such as to present a visible or external sign": Fowler v. Risedorph Bottling Co., S. D. R., vol. 8, p. 404; 175 App. Div. 224. The Commission's practice in hernia cases is stated in Bul., vol. 2, p. 50.

3. Permanent partial disability. In case of disability partial in character but permanent in quality the compensation shall be sixty-six and two-thirds per centum* of the average weekly wages and shall be paid to the employee for the period named in the schedule, as follows:

* For additional limitation of amount compare § 15, subd. 5.

Thumb. For the loss of a thumb, sixty weeks.

First finger. For the loss of a first finger, commonly called index finger, forty-six weeks.

Second finger. For the loss of a second finger, thirty weeks.

Third finger. For the loss of a third finger, twenty-five weeks.

Fourth finger. For the loss of a fourth finger, commonly called the little finger, fifteen weeks.

For loss of fingers, see also below, this subdivision, under "Loss of use."

Phalange of thumb or finger. The loss of the first phalange of the thumb or finger shall be considered to be equal to the loss of one-half of such thumb or finger, and compensation shall be one-half of the amount above specified. The loss of more than one phalange shall be considered as the loss of the entire thumb or finger. [1]Where the injury results in the loss of more than one finger, compensation therefor may be awarded for the proportionate loss of the use of the hand thereby occasioned; provided, however, that in no case shall the [2]compensation awarded for more than one finger exceed the amount provided in this schedule for the loss of a hand. [*Clause am'd by L.* 1917, *ch.* 705.]

[1] Words "Where the injury . . . thereby occasioned," inserted by L. 1917, ch. 705.

[2] Words "compensation awarded" substituted for words "amount received," by L. 1917, ch. 705.

The amendment relative to proportionate loss may be read in the light of the Grammici and Kanzar reversals cited below under "Loss of use."

The amputation of one-third of the first phalange of a finger has been held to constitute, in law, the loss of the phalange, and, therefore, the loss of half the finger: Matter of Petrie, 165 App. Div. 561; 215 N. Y. 335; not so, however, removal of mere tips or shavings of bone: Mockler v. Hawkes, 173 App. Div. 333; Geiger v. Gotham Can Co., S. D. R., vol. 9, p. 249; 177 App. Div. 29; Thompson v. Sherwood Shoe Co., —— App. Div. ——, May 2, 1917.

Great toe. For the loss of a great toe, thirty-eight weeks.

Other toes. For the loss of one of the toes other than the great toe, sixteen weeks.

Phalange of toe. The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of said toe, and the compensation shall be one-half of the amount specified. The loss of more than one phalange shall be considered as the loss of the entire toe. [1]Where the injury results in the loss of more than one toe compensation therefor may be awarded for the proportionate loss of the use of the foot thereby occasioned, provided, however, that in no case shall the compensation awarded for more than one toe exceed the amount provided in this schedule for the loss of the foot. [*Clause am'd by L.* 1917, *ch.* 705.]

[1] Following sentence inserted by L. 1917, ch. 705.

Compare notes under "Phalange of thumb or finger" above.

Hand. The loss of a hand, two hundred and forty-four weeks.

Arm. For the loss of an arm, three hundred and twelve weeks.

Foot. For the loss of a foot, two hundred and five weeks.

Leg. For the loss of a leg, two hundred and eighty-eight weeks.

Eye. For the loss of an eye, one hundred and twenty-eight weeks.

Loss of use. Permanent loss of the use of a hand, arm, food, leg, [1]eye, [2]thumb, finger, toe, or phalange, shall be considered as the equivalent of the loss of such hand, arm, foot, leg, [1]eye, [2]thumb, finger, toe or phalange. [*Clause am'd by L.* 1916, *ch.* 622.]

[1] Word "or," stricken out by L. 1916, ch. 622.

[2] Words "thumb, finger, toe, or phalange," inserted by L. 1916, ch. 622.

In Rockwell v. Lewis, 168 App. Div. 674, the Appellate Division held that loss of fingers may constitute loss of the hand; and in Feinman v. Albert Mfg. Co., that loss of part of a finger may constitute loss of the finger; appeal in the Rockwell case was dismissed because of a technicality: 218 N. Y. 692; in Grammici v. Zinn, S. D. R., vol. 5, p. 400; 173 App. Div. 922; 219 N. Y. 322, and Kanzar v. Acorn Mfg. Co., S. D. R., vol. 5, p. 418; 173 App. Div. 988; 219 N. Y. 326, the Court of Appeals reversed Appellate Division orders affirming awards for loss of the use of the hand because of loss limited to the fingers; in Cobb v. Library Bureau, S. D. R., vol. 8, p. 418; 176 App. Div. 91, the Appellate Division comments on these Court of Appeals' reversals; compare Cunningham v. Buffalo C. & B. Rolling Mills, 171 App. Div. 955.

Loss of not more than eighty per cent of the vision of an eye does not constitute loss of use of the eye: Boscarino v. Carfagno & Dragonette, 175 App. Div. 286; 220 N. Y. 323; other cases involving loss of percentages of vision are: Archangelo v. Gallo & Laguidora, remanded by the Appellate Division, March 7, 1917; Blaes v. Bliss Co., S. D. R., vol. 9, p. 288, affirmed by the Appellate Division, March 7, 1917; and Fiori v. Stewart & Co., S. D. R., vol. 8, p. 503.

Partial loss and partial loss of use. For the partial loss or the partial loss of the use of a hand, arm, foot, leg or eye, compensation therefor may be awarded for the proportionate loss or proportionate loss of the use of such hand, arm, foot, leg or eye. [*Clause added by L.* 1917, *ch.* 705.]

The insertion of this paragraph relative to partial loss may be read in the light of the Grammici and Kanzar reversals cited above under "Loss of use."

Amputations. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand. Amputation between the

knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm. Amputation at or above the knee shall be considered as the loss of the leg.

The compensation for the foregoing specific injuries shall be in lieu of all other compensation, except the benefits provided in section thirteen of this chapter.

In case of an injury resulting in serious facial or head disfigurement the commission may in its discretion, make such award or compensation as it may deem proper and equitable, in view of the nature of the disfigurement, but not to exceed three thousand five hundred dollars. [*Clause added by L.* 1916, *ch.* 622.]

The insertion of this paragraph relative to disfigurement may be read in the light of Shinnick v. Clover Farms Co., 169 App. Div. 236, an employer's liability decision the effect of which has recently been offset by Shanahan v. Monarch Engineering Co., 219 N. Y. 469; compare § 11.

Other cases. In all other cases in this class of disability, the compensation shall be sixty-six and two-thirds per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the commission on its own motion or upon application of any party in interest.

This "other cases" paragraph has been held inapplicable to partial loss or stiffening of fingers: Matter of Petrie, 165 App. Div. 65; 215 N. Y. 335; Feinman v. Albert Mfg. Co., 170 App. Div. 147; Fortino v. Merchants' Despatch Transportation Co., 171 App. Div. 956. Relative to disfigurement, it has been held inapplicable in Shinnick v. Clover Farms Co., 169 App. Div. 236; but applicable in Wagner v. American Bridge Co., 172 App. Div. 876. The Commission has been applying it to cases of "impaired earnings," so-called, in which the injured employee has been able to return to work but with reduced capacity to labor and consequent reduced pay: Saccoccio v. Bradley Contracting Co., S. D. R., vol. 6, p. 410; Mike v. Glens Falls Portland Cement Co., S. D. R., vol. 7, p. 435; Neuner v. Hanschman, S. D. R., vol. 8, p. 419; Kaempfer v. Automobile Club of America, S. D. R., vol. 10, p. 591; and Miller v. Ludlum Steel Co., Bul., vol. 2, pp. 15, 21.

4. Temporary partial disability. In case of temporary partial disability, except the particular cases mentioned in subdivision three of this section, an injured employee shall receive sixty-six and two-thirds per centum of the difference between his average weekly wages and his wage earning capacity thereafter in the same employment or otherwise during the continuance of such partial disability, but not [1]to exceed when combined with his decreased earnings the amount of wages he was receiving prior to the injury, and not to exceed in total the sum of three thousand five hundred dollars, except as otherwise provided in this chapter. [*Subd.* 4 *am'd by L.* 1916, *ch.* 622.]

[1] Words "to exceed when . . . total the sum" substituted for words "in excess," by L. 1916, ch. 622.

For additional limitation of amount compare § 15, subd. 5.

5. Limitation. The compensation payment under subdivisions one, two and four and under subdivision three except in case of the loss of a hand, arm, foot, leg or eye, shall not exceed fifteen dollars per week nor be less than five dollars per week; the compensation payment under subdivision three in

case of the loss of a hand, arm, foot, leg or eye, shall not exceed twenty dollars per week nor be less than five dollars a week; provided, however, that if the employee's wages at the time of injury are less than five dollars per week he shall receive his full weekly wages.

Compare note to § 14.

6. Previous disability. The fact that an employee has suffered previous disability or received compensation therefor shall not preclude him from compensation for a later injury nor preclude compensation for death resulting therefrom; but in determining compensation for the later injury or death his average weekly wages shall be such sum as will reasonably represent his earning capacity at the time of the later injury, [1]provided, however, that an employee who is suffering from a previous disability shall not receive compensation for a later injury in excess of the compensation allowed for such injury when considered by itself and not in conjunction with the previous disability. [*Subd.* 6 *am'd by L.* 1915, ch. 615.]

[1] Remainder of subdivision added by L. 1915, ch. 615.

This proviso, added by L. 1915, ch. 615, obviates the decision in Schwab v. Emporium Forestry Co., 167 App. Div. 614; 216 N. Y. Rep. 712. L. 1916, ch. 622, has made special provision for this class of cases by the addition of subd. 7, following.

7. Permanent total disability after permanent partial disability. If an employee who has previously incurred permanent partial disability through the loss of one hand, one arm, one foot, one leg, or one eye, incurs permanent total disability through the loss of another member or organ, he shall be paid, in addition to the compensation for permanent partial disability provided in this section and after the cessation of the payments for the prescribed period of weeks special additional compensation for the remainder of his life to the amount of sixty-six and two-thirds per centum of the average weekly wage earned by him at the time the total permanent disability was incurred. Such additional compensation shall be paid out of a special fund created for such purpose in the following manner: The insurance carrier shall pay to the state treasurer for every case of injury causing death in which there are no persons entitled to compensation the sum of one hundred dollars. The state treasurer shall be the custodian of this special fund, and the commission shall direct the distribution thereof. [*Subd.* 7 *added by L.* 1916, *ch.* 622.]

The constitutionality of subdivision seven has been unanimously sustained by the Appellate Division in State Industrial Commission v. Newman, and State Industrial Commission v. Edsall, decided July 3, 1917.

An award under § 15 is not a vested interest such as to descend to the employee's heirs when he dies from cause other than the accidental injury for which he is receiving compensation: Wozneak v. Buffalo Gas Co., 175 App. Div. 268; Kifer v. Buffalo Chair Works, Bul., vol. 2, p. 66, S. D. R., no. 66, p. 91; accrued compensation is awardable to next of kin: Redner v. Faber & Son, Bul., vol. 2, p. 162.

§ 16. **Death benefits.**— If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

1. Reasonable funeral expenses not exceeding one hundred dollars;

Funeral expenses are "compensation": § 3 subd. 6.

2. If there be a surviving wife (or dependent husband) and no child of the deceased under the age of eighteen years, to such wife (or dependent husband) thirty per centum of the average wages of the deceased during widow-

hood (or dependent widowerhood) with two years' compensation in one sum, upon remarriage; and if there be surviving child or children of the deceased under the age of eighteen years, the additional amount of ten per centum of such wages for each such child until of the age of eighteen years; [1]in case of the subsequent death of such surviving wife (or dependent husband) any surviving child of the deceased employee, at the time under eighteen years of age, shall have his compensation increased to fifteen per centum of such wages, and the same shall be payable until he shall reach the age of eighteen years; provided that the total amount payable shall in no case exceed sixty-six and two-thirds per centum of such wages. [2]The commission may in its discretion require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement by the commission the appointment of a guardian for such purposes shall not be necessary. [*Subd.* 2 *am'd by L.* 1914, *ch.* 316; *and L.* 1916, *ch.* 622.]

[1] Words "in case of . . . age of eighteen years," inserted by L. 1914, ch. 316.

[2] Remainder of subdivision added by L. 1916, ch. 622.

For additional limitation of amount awardable compare final paragraph of this section.

An award based on common-law marriage is valid: Ziegler v. Cassidy's Sons, S. D. R., vol. 4, p. 343; 171 App. Div. 959; 220 N. Y. 98.

Death benefits have been denied because of failure to prove marriage in Salvadori v. Interborough R. T. Co., S. D. R., vol. 5, p. 438; McNeill v. Hogan & Sons, S. D. R., vol. 7, p. 469; Berger v. Shadboldt Mfg. Co., S. D. R., vol. 8, p. 460; and Angelucci v. Kerbaugh, S. D. R., vol. 9, p. 387.

A wife, having received two years' compensation in lump sum, applied for reconsideration of the award on the ground that her remarriage had proved to be illegal: Tremberger v. Pape, Files of Commission, No. 394, January 19, 1916.

A wife married to an injured man after his accident is entitled to death benefits when he dies of the injury: Crockett v. International Ry. Co., 170 App. Div. 122; 176 App. Div. 45.

For definition of children compare § 3, subd. 11, and note thereto.

The addition of the provisions relative to guardianship may be read in the light of Woodcock v. Walker, 170 App. Div. 4.

3. If there be surviving child or children of the deceased under the age of eighteen years, but no surviving wife (or dependent husband) then for the support of each such child until of the age of eighteen years, fifteen per centum of the wages of the deceased, provided that the aggregate shall in no case exceed sixty-six and two-thirds per centum of such wages.

For additional limitation of amount awardable compare final paragraph of this section.

A woman employee, killed by a fall, left two children; her husband was in a state hospital insane; the Commission held that a claim made by the State on account of the husband would be good but that, until such claim should be made, each child would be entitled to fifteen per cent: Urban v. Frank & Co., Bul., vol. 2, p. 46.

4. If [1]there be no surviving wife (or dependent husband) or child under the age of eighteen years or if the amount payable to surviving wife (or dependent husband) and to children under the age of eighteen years shall be less in the aggregate than sixty-six and two-thirds per centum of the average wages of the deceased, then for the support of grandchildren or brothers and sisters under the age of eighteen years, if dependent upon the deceased at the time of the accident, fifteen per centum of such wages for the support of each such person until of the age of eighteen years; and for the support of each

parent, or grandparent, of the deceased if dependent upon him at the time of the accident, [2]twenty-five per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between sixty-six and two-thirds per centum of such wages, and the amount payable as hereinbefore provided to surviving wife (or dependent husband) or for the support of surviving child or children.

[1] Words "there be no surviving wife (or dependent husband) or child under the age of eighteen years or if," inserted by L. 1916, ch. 622.

[2] Word "twenty-five" substituted for word "fifteen," by L. 1916, ch. 622.

For additional limitation of amount awardable compare final paragraph of this section.

The first of the above amendments confirms the decision in Friscia v. Drake Bros. Co., 167 App. Div. 496, which decision also holds that parents may be dependent upon the wages of minor children.

Section seventeen, following, excludes dependent grandchildren, brothers and sisters of aliens, who are in foreign countries, from death benefits, and conditions dependency of parents or grandparents of aliens, who are in foreign countries, upon at least a year's support.

Any excess of wages over one hundred dollars a month shall not be taken into account in computing compensation under this section. All questions of dependency shall be determined as of the time of the accident. [*Subd.* 4 *am'd by L.* 1916, *ch.* 622.]

Dependents supported by the decedent employee voluntarily, partially or indirectly, are entitled to death benefits: Walz v. Holbrook, Cabot & Rollins Corp., 170 App. Div. 6.

A ruling of the State Industrial Commission that a claimant is dependent, if supported by any evidence, is final and non-reviewable by the courts: Hendricks v. Seeman Bros., 170 App. Div. 133; rulings illustrating dependency of parents are: Williams v. Coney Island Construction Co., S. D. R., vol. 6, p. 346; Moquin v. Robeson Process Co., S. D. R., vol. 7, p. 479; 175 App. Div. 957; Sampson v. O'Dell & Eddy Co., S. D. R., vol. 9, p. 272; and Gregory v. Suffolk Light, H. & P. Co., Bul., vol. 2, p. 65; dependency of minor brothers and sister was found in North v. McCreery Realty Corp., S. D. R., vol. 6, p. 329, upon expressed stipulation of the insurance carrier.

In computing wages as the basis of benefits to the dependents of a deceased minor, allowance may be made under § 14, subd. 5, for the minor's expectation of wage increase: Kilberg v. Vitch, S. D. R., vol. 4, p. 434; 171 App. Div. 89.

The final sentence of this section does not govern death benefits to widows and children, since their compensation is not conditioned upon dependency: Crockett v. International Ry. Co., 170 App. Div. 122; 176 App. Div. 45.

§ 17. **Aliens.**— Compensation under this chapter to aliens not residents (or about to become nonresidents) of the United States or Canada, shall be the same in amount as provided for residents, [1]except that dependents in any foreign country shall be limited to surviving wife and child or children, or, if there be no surviving wife or child or children, to surviving father or mother, or grandfather or grandmother, whom the employee has supported, either wholly or in part, for the period of one year prior to the date of the accident, and except that the commission may, at its option, or upon the application of the insurance carrier, shall, commute all future installments of compensation to be paid to such aliens, by paying or causing to be paid to them one-half of the commuted amount of such future instalments of compensation as determined by the commission. [*As am'd by L.* 1916, *ch.* 622.]

[1] Words "except that dependents . . . date of the accident, and," inserted by L. 1916, ch. 622.

Compare § 25 and note thereto. The Commission distinguishes under this section between lump sum payments to non-resident and to resident dependents; from the

former it deducts one-half of such periodic payments as have already been made, from the latter it does not: D'Angelo v. Smith & Locher Co., Files of Commission, No. 60063, Dec. 22, 1915, and Feb. 3, 1916. For one instance of lump sum award to a foreign family compare Hubinak v. Endicott, Johnson & Co., S. D. R., vol. 8, p. 507; 175 App. Div. 958.

§ 18. **Notice of injury.**— Notice of an injury for which compensation is payable under this chapter shall be given to the commission and to the employer within ten days after disability, and also in case of the death of the employee resulting from such injury, within thirty days after such death. Such notice may be given by any person claiming to be entitled to compensation, or by some one in his behalf. The notice shall be in writing, and contain the name and address of the employee and state in ordinary language the time, place, nature and cause of the injury, and be signed by him or by a person on his behalf or, in case of death, by any one or more of his dependents or by a person on their behalf. It shall be given to the commission by sending it by mail, by registered letter, addressed to the commission at its office. It shall be given to the employer by delivering it to him or sending it by mail, by registered letter, addressed to the employer at his or its last known place of residence; provided that, if the employer be a partnership then such notice may be so given to any one of the partners, and if the employer be a corporation, then such notice may be given to any agent or officer thereof upon whom legal process may be served, or any agent in charge of the business in the place where the injury occurred. The failure to give such notice, unless excused by the commission either on the ground that notice for some sufficient reason could not have been given, or on the ground that the state fund, insurance company, or employer, as the case may be, has not been prejudiced thereby, shall be a bar to any claim under this chapter.

In regard to evidence of accidental injury, §§ 18, 21 and 111 are to be read together. Notice to the employer is notice to the insurance carrier: § 54, subd. 2. An exception as to time limits is made on behalf of minors and incompetents: § 116.

The Appellate Division upheld the Commission's action in excusing the employee's failure to give notice, with opinion, in Marinaccio v. Flinn-O'Rourke Co., S. D. R., vol. 6, p. 318; 172 App. Div. 378; and without opinion, in Bloomfield v. November, S. D. R., vol. 5, p. 385; 172 App. Div. 917. The Commission commented on its refusal to excuse in Marcontonio v. Charles Francis Press, S. D. R., vol. 9, p. 390; and amended findings relative to excuse at the instance of the Appellate Division in Winters v. Marcotte & Co., 174 App. Div. 936; S. D. R., vol. 10, p. 639. The Court of Appeals reversed the award and order or affirmance and remitted the claim in Bloomfield v. November, 219 N. Y. 374, on the ground that there had been insufficient statement of the conditions justifying excuse. On authority of this decision, the Appellate Division, with opinion in each instance, reversed the awards and remitted the claims in Prokopiak v. Buffalo Gas Co., 176 App. Div. 128, and Sicardi v. Sarnoff Hat Co., 176 App. Div. 13.

Instances of the Commission's refusal to excuse are: Opitz v. Tietje, S. D. R., vol. 6, p. 347; Graf v. Brooklyn Rapid Transit Co., S. D. R., vol. 7, p. 381; Carriero v. Astoria Co., S. D. R., vol 10, p. 576; Sobolewski v. Union Porcelain Works, Bul., vol. 2, p. 128; and Bernardo v. Adams, Bul., vol. 2, p. 129. Instances of its willingness to excuse are: Rist v. Larkin & Sangster, S. D. R., vol. 5, p. 381; Birn v. Bradley Contracting Co., S. D. R., vol. 6, p. 391; Gaffney v. Wynotal Realty & Hotel Co., S. D. R., vol. 9, p. 395; Blenderman v. Cording & Salzman, S. D. R., vol. 10, p. 580; and Caine v. Greenhut & Co., Bul., vol. 2, p. 125.

§ 19. **Medical examination.**— An employee injured claiming or entitled to compensation under this chapter shall, if requested by the commission, submit

himself for medical examination at a time, and from time to time, at a place reasonably convenient for the employee, and as may be provided by the rules of the commission. If the employee or the insurance carrier request he shall be entitled to have a physician or physicians of his own selection to be paid by him present to participate in such examination. If an employee refuse to submit himself to examination, his right to prosecute any proceeding under this chapter shall be suspended, and no compensation shall be payable, for the period of such refusal.

§ 20. **Determination of claims for compensation.**—At any time after the expiration of the first fourteen days of disability on the part of an injured employee, or at any time after his death, a claim for compensation may be presented to the [1]employer and if rejected or if within ten days after presentation, a report containing an agreement for compensation be not made and filed with the commission as provided by this section, the claim may be presented to the commission. The commission shall have full power and authority to determine all questions in relation to the payment of claims [2]presented to it for compensation under the provisions of this chapter. The commission shall make or cause to be made such investigation as it deems necessary, and upon application of either party, shall order a hearing, and within thirty days after a claim for compensation is submitted under this section, or such hearing closed, shall make or deny an award, determining such claim for compensation, and file the same in the office of the commission.[3] The commission may before making an award, require the claimant to appear before an arbitration committee appointed by it and consisting of one representative of employees, one representative of employers, and either a member of the commission or a person specially deputized by the commission to act as chairman, before which the evidence in regard to the claim shall be adduced and by which it shall be considered and reported upon. Immediately after such filing the commission shall send to the parties a copy of the decision. Upon a hearing pursuant to this section either party may present evidence and be represented by counsel. The decision of the commission shall be final as to all questions of fact, and, except as provided in section twenty-three, as to all questions of law. [4]When a claim is presented to an employer, and the employer and employee, or in case of death, his principal dependent, enter into an agreement for the payment of compensation therefor pursuant to this chapter, a joint report of such claim containing such agreement shall be made to the commission upon a form prepared by it and signed by the employer and employee, or in case of death his principal dependent. The commission shall examine such report and approve the same when the terms are strictly in accordance with this chapter and such approval shall constitute an award. However, the commission may make an award in the manner provided in this section in any case, and if the terms of the award vary from the joint report, the employer shall comply with the award. In case of unfair dealing or of bad faith on the part of the employer under this section, the commission may impose a penalty of not more than ten per centum of the award. [*As am'd by L.* 1915, *ch.* 167; *and L.* 1917, *ch.* 705.]

[1] Words "employer and if . . . presented to the," inserted by L. 1915, ch. 167.

[2] Words "presented to it," inserted by L. 1915, ch. 167.

[3] Words "together with a statement of its conclusions of fact and rulings of law," stricken out by L. 1917, ch. 705.

[4] Remainder of section added by L. 1915, ch. 167.

Relative to finality of Commission's decisions compare § 23, note.

The phrase "principal dependent" authorizes a mother to make an agreement with her husband's employer on behalf of her children: Woodcock v. Walker, 170 App. Div. 4.

The Commission's duty to disapprove of an inaccurate agreement is emphasized in Cohen v. Rothstein & Pitofsky, 176 App. Div. 35.

The Commission has exercised its power to modify or set aside agreements in Rudewicz v. Wendell & Evans Co., S. D. R., vol. 6, p. 408; Leiser v. General Drop Forge Co., S. D. R., vol. 7, p. 467; Martin v. Roff Underwear Co., S. D. R., vol. 7, p. 481; Sloat v. Rochester Taxicab Co., S. D. R., vol. 8, p. 498; and Crotty v. Pa. R. R. Co., S. D. R., vol. 9, p. 364; it approved the agreement in Klein v. Stoller & Cook Co., S. D. R., vol. 8, p. 440.

§ 20-a. **Payment of moneys in advance of award by commission.**— Any employer shall upon the making of the agreement provided for in section twenty advance to any injured employee or to the principal dependent of a deceased employee, the payment or payments provided for in the agreement, in return for which he shall receive a receipt on a form supplied by the commission and signed by the person receiving the money, which receipt shall specifically state in what capacity the signer acted while so receiving such money; such receipt shall be forwarded to the commission within forty-eight hours after date of its issuance and the sum stated on its face shall be returned to said employer as provided in section twenty-five.

Prior to the making of said agreement or in the event of no agreement, any employer may at his option advance to any injured employee or to the principal dependent of a deceased employee any sum of money, in return for which he shall receive a receipt on a form supplied by the commission and signed by the person receiving the money, which receipt shall specifically state in what capacity the signer acted while so receiving such money; such receipt shall be forwarded to the commission within forty-eight hours after date of its issuance. Should any agreement or award be made the sum so stated on the face of the receipt shall be credited to the payment under the award or agreement and shall be repaid as hereinbefore provided. Any money so advanced shall be at the employer's risk. [*Added by L.* 1915, *ch.* 168.]

For exclusive form of receipt and other requisites to obtaining credit on account of advance payment see Bul., vol. 2, p. 94.

§ 21. **Presumptions.**— In any proceeding for the enforcement of a claim for compensation under this chapter, it shall be presumed in the absence of substantial evidence to the contrary

1. That the claim comes within the provisions of this chapter;
2. That sufficient notice thereof was given;
3. That the injury was not occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another;
4. That the injury did not result solely from the intoxication of the injured employee while on duty.

The constitutionality of the presumption in subd. 1 is upheld in McQueeney v. Sutphen & Myer, 167 App. Div. 528. Such presumption "does not permit the words of the statute to be warped from their usual and ordinary meaning": Tomassi v. Christensen, 171 App. Div. 284.

Defendant must offer evidence to the Commission; otherwise the claim is presumptively legal: McQueeney v. Sutphen & Myer, 167 App. Div. 528; Kohler v. Frohmann, 167 App. Div. 533; Powley v. Vivian & Co., 169 App. Div. 177.

The presumptions of § 21 are as operative and binding in the court upon appeal as in the Commission: Rheinwald v. Builders' Brick & Supply Co., 168 App. Div. 433; compare also White v. N. Y. Central & H. R. R. R. Co., S. D. R., vol. 2, p. 477, as affirmed by the New York courts without opinion, 169 App. Div. 903; 216 N. Y. 653. The Commission may not presume that an accident happened: Hyland v. Winant, S. D. R., vol. 6, p. 304.

Operation of the presumptions is further illustrated by the following cases, several of which turn upon sudden death by unwitnessed accident: Chludzinski v. Standard Oil Co., 176 App. Div. 87; Fleming v. Gair Co., 176 App. Div. 23; Kobyra v. Adams, 176 App. Div. 43; Fitzsimmons v. Wordsworth, S. D. R., vol. 6, p. 351; —— App. Div. ——, March 7, 1917; Campanella v. Stola Construction & Building Co., S. D. R., vol. 9, p. 385; Juharz v. Moline Plow Co., Bul., vol. 2, p. 128; Gifford v. Patterson, Bul., vol. 2, p. 129; unanimously affirmed in Appellate Division, July 3, 1917.

§ 22. **Modification of award.**— Upon its own motion or upon the application of any party in interest, on the ground of a change in conditions, the commission may at any time review any award, and, on such review, may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this chapter, and shall state its conclusions of fact and rulings of law, and shall immediately send to the parties a copy of the award. No such review shall affect such award as regards any moneys already paid.

Compare § 74.

§ 23. **Appeals from the commission.**— An award or decision of the commission shall be final and conclusive upon all questions within its jurisdiction, as against the state fund or between the parties, unless [1]reversed or modified on appeal therefrom as hereinafter provided. Within thirty days after notice of the filing of the award or the decision of the commission has been sent to the parties an appeal may be taken to the appellate division of the supreme court, third department, from such award or decision by any party in interest including an employer insured in the state fund. If notice of such appeal is served upon the commission, the commission shall within thirty days thereafter serve upon the parties in interest a statement of its conclusions of fact and rulings of law in such case. The commission may also, in its discretion [2]certify to such appellate division of the supreme court, questions of law involved in its decision. Such appeals and the questions so certified shall be heard in a summary manner and shall have precedence over all other civil cases in such court. The commission shall be deemed a party to every such appeal, and the attorney-general, without extra compensation, shall represent the commission thereon. An appeal may also be taken to the court of appeals in all cases where [3]the decision of the appellate division is not unanimous and by the consent of the appellate division or a judge of the court of appeals where the decision of the appellate division is unanimous in the same manner and subject to the same limitations [4]not inconsistent herewith as is now provided in civil actions. [5]It shall not be necessary to file exceptions to the rulings of the commission. The commission shall not be required to file a bond upon an appeal by it to the court of appeals. Otherwise such appeals shall be subject to the law and practice applicable to appeals in civil actions. Upon [6]final determination of such an appeal, the commission shall [7]enter an order in accordance therewith. [*As am'd by L.* 1916, *ch.* 622; *and L.* 1917, *ch.* 705.]

[1] Words "reversed or modified on appeal . . . law in such case" substituted for words "within thirty days after a copy of such award or decision has been sent to the parties, an appeal be taken to the Appellate Division of the Supreme Court of the third department," by L. 1917, ch. 705.

[2] Words "where the claim for compensation was not made against the state fund," stricken out by L. 1916, ch. 622; and words "on the application of either party," stricken out by L. 1917, ch. 705.

[3] Words "the decision of the appellate division . . . division is unanimous" substituted for words "such an appeal would lie from a decision of an appellate division," by L. 1916, ch. 622.

[4] Words "not inconsistent therewith" inserted by L. 1916, ch. 622.

[5] Words "It shall not be necessary . . . court of appeals," inserted by L. 1916, ch. 622.

[6] Word "the," stricken out by L. 1917, ch. 705.

[7] Words "enter an order" substituted for words "make an award or decision," by L. 1917, ch. 705.

The continuing jurisdiction given to the Commission by § 74 is not cut off by an appeal; the Commission may review a case though it has been carried to the courts: McNally v. Diamond Mills Paper Co., S. D. R., vol. 9, p. 352 (Reversed by Appellate Division, May 2, 1917). Appeal apparently cannot be taken to the Court of Appeals from an Appellate Division decision answering a certified question: Kifer v. Buffalo Chair Works, Bul., vol. 2, p. 66; S. D. R., no. 66, p. 91. Previously to amendment of this section by L. 1917, ch. 705, an employer insured in the state fund could not appeal from the Commission to the courts: Crockett v. International Railway Co., 170 App. Div. 122. The amendment of § 23 by L. 1916, ch. 622, regulating appeals from the Appellate Division to the Court of Appeals may be read in connection with Hartnett v. Steen Co., 216 N. Y. 101. The law governing appeals in civil actions is the Code of Civil Procedure, §§ 190, 191, as based on the Constitution of New York, Art. 6, §§ 1, 9; said §§ 190 and 191 have been revised by L. 1917, ch. 290. The amendment relative to filing of exceptions, etc., is in line with the decision in Kenny v. Union Railway Co., 166 App. Div. 497.

The right of the court's to review the Commission's rulings or decisions is restricted by the sentence in § 20, which declares: "The decision of the Commission shall be final as to all questions of fact, and except as provided in section twenty-three, as to all questions of law." For the jurisdiction of the courts to review the evidence in compensation cases, see Carroll v. Knickerbocker Ice Co., 169 App. Div. 450; 218 N. Y. 435; Goldstein v. Centre Iron Works, 167 App. Div. 526; Gardner v. Horseheads Construction Co., 171 App. Div. 66; Rhyner v. Hueber Building Co., 171 App. Div. 58. The Appellate Division in the Rhyner case declares that "if there are no facts in the case * * * a question of law arises" which gives the courts jurisdiction. The Appellate Division having in the Carroll case upheld an award upon hearsay evidence, the Court of Appeals, reversing the decision, holds that § 68 simply allows the Commission in its discretion to accept hearsay or any other kind of evidence but does not authorize it to make an award unsupported by "a residuum of legal evidence."

§ 24. **Costs and fees.**— If the commission or the court before which any proceedings for compensation or concerning an award of compensation have been brought, under this chapter, determines that such proceedings have not been so brought upon reasonable ground, it shall assess the whole cost of the proceedings upon the party who has so brought them. Claims for legal services in connection with any claim arising under this chapter, and claims for services or treatment rendered or supplies furnished pursuant to section thirteen of this chapter, shall not be enforceable unless approved by the commission. If so approved, such claim or claims shall become a lien upon the compensation awarded, but shall be paid therefrom only in the manner fixed by the commission. [1]In case an award is affirmed upon an appeal to the appellate division, the same shall be payable with interest

thereon from the date when said award was made by the commission. [*As am'd by L.* 1917, *ch.* 705.]

[1] Following sentence added by L. 1917, ch. 705.

See also §§ 13, 26.

When appeals are brought upon reasonable ground, § 23, above, leaves assessment of costs to the court's discretion; ordinarily the court will not assess them against an unsuccessful claimant but will assess them against an unsuccessful employer or insurer; it will assess them against the Commission rather than against the unsuccessful claimant: Wilson v. Dorflinger & Sons, 218 N. Y. 120; Matter of Petrie, 218 N. Y. 116.

A physician cannot maintain an action against an employer or insurance carrier for medical services to an injured employee: Bloom v. Jaffe, 94 Misc. 222; Hirsch v. Zurich General A. & L. Ins. Co., 97 Misc. 360.

§ 25. **Compensation, how payable.**— Compensation under the provisions of this chapter shall be payable periodically [1]by the employer, in accordance with the method of payment of the wages of the employee at the time of his injury or death, and shall be so provided for in any award; but the commission may determine that [2]any payments may be made monthly or at any other period, as it may deem advisable. [3]The state fund or insurance corporation in which an employer is insured shall, within ten days after demand by such employer and on the presentation of evidence of payment of compensation in accordance with this chapter, reimburse the employer therefor. An injured employee, or in case of death his dependents or personal representative, shall give receipts for payment of compensation to the employer paying the same and such employer shall forward receipts therefor promptly to the commission. The commission, whenever it shall so deem advisable, may commute such periodical payments to one or more lump sum payments [4]to the injured employee or, in case of death, his dependents, provided the same shall be in the interest of justice.[5] [*As am'd by L.* 1915, *ch.* 167.]

[1] Words "by the employer," inserted by L. 1915, ch. 167.

[2] Words "any payments" substituted for words "all payments or payments as to any particular group," by L. 1915, ch. 167.

[3] Following sentence inserted by L. 1915, ch. 167.

[4] Words "to the injured employee or, in case of death, his dependents," inserted by L. 1915, ch. 167.

[5] Concluding provisions for payment of all compensation through commission as intermediary stricken out by L. 1915, ch. 167.

Relative to payment of compensation compare § 53; relative to lump sum awards, § 16, subd. 2, and § 17.

For the Commission's policy relative to lump sum awards compare Bul., vol. 1, no. 5, pp. 2, 3, no. 11, p. 17, no. 12, pp. 2, 3; vol. 2, pp. 50, 62.

Lump sum awards are strictly subordinated to the periodic payment plan by the phrase "in the interest of justice": Adams v. N. Y., Ontario & Western Ry. Co., 175 App. Div. 714; 220 N. Y. ——.

A case involving sixteen employers and ten insurance carriers was disposed of by lump sum computation: Sayers v. Ogdensburg Power & Light Co., et al., S. D. R., vol. 8, p. 393. Other cases illustrative of the lump sum question are: Rosenblatt v. Royal Table Co., S. D. R., vol. 7, p. 456; Leiser v. General Drop Forge Co., S. D. R., vol. 7, p. 467; and Knerr v. Asbestos Protected Metal Co., Bul., vol. 2, p. 106.

When an employee dies from causes other than the injury for which he is receiving compensation in periodic installments, the remainder of the award does not survive to his estate: Wozneak v. Buffalo Gas Co., 175 App. Div. 268; Kifer v. Buffalo Chair Works, Bul., vol. 2, p. 66; S. D. R., no. 66, p. 91.

§ 26. **Enforcement of payment in default.**— If payment of compensation, or an instalment thereof, due under the terms of an award, be not made

[1]by the employer within ten days after the same is due, [2]the insurance carrier shall be liable therefor and if not paid within ten days after demand by the injured employee or in case of death his dependents or by the commission, the amount of such payment shall constitute a liquidated claim for damages against[3] the [4]employer, self-insurer or insurance corporation, which with an added penalty of fifty per centum may be recovered in an action to be instituted by the commission in the name of the people of the state. [5]An employer who negligently or intentionally defaults in payment of compensation in the the first instance under this chapter shall be liable to a penalty of not more than ten per centum of the amount of such compensation, notwithstanding the fact that the insurance corporation or state fund subsequently pays the compensation as provided in this section. If such default be made in the payment of an instalment of compensation and the whole amount of such compensation be not due, the commission may, if the present value of such compensation be computable, declare the whole amount thereof due, and recover the amount thereof with the added [6]penalties, as provided by this section. Any such action may be compromised by the commission or may be prosecuted to final judgment as, in the discretion of the commission, may best serve the interests of the persons entitled to receive the compensation or the benefits. Compensation recovered under this section shall be disbursed by the commission to the persons entitled thereto in accordance with the award. A penalty recovered pursuant to this section shall be paid into the state treasury, and be applicable to the expenses of the commission.

[7]In case of default by the employer in the payment of any compensation due under an award for the period of thirty days after payment is due and payable, any party in interest may file with the county clerk for the county in which the injury occurred, a certified copy of a decision of the state industrial commission awarding compensation, or ending, diminishing or increasing compensation previously awarded, from which no appeal has been taken within the time allowed therefor, and thereupon judgment must be entered in the supreme court by the clerk of such county in conformity therewith immediately upon the filing of such decision. Such decree or judgment shall be entered in the same manner and shall have the same effect and all proceedings in relation thereto shall thereafter be the same, as though said decree or judgment had been rendered in a suit duly heard and determined by the supreme court, except that there shall be no appeal therefrom. The court upon the filing with it of a certified copy of a decision of the state industrial commission ending, diminishing or increasing compensation previously awarded, shall revoke or modify its prior decree or judgment so that it will conform to said decision. Neither the commission nor any party in interest shall be required to pay any fee to any public officer for filing or recording any paper or instrument executed in pursuance of this section. [*As am'd by L.* 1915, *ch.* 167; *and L.* 1916, *ch.* 622.]

[1] Words "by the employer" inserted by L. 1915, ch. 167.

[2] Words "the insurance carrier . . . or by the Commission" substituted for words "by the employer or insurance corporation liable therefor," by L. 1915, ch. 167.

[3] Words "the self-insurer" substituted for words "such employer," by L. 1915, ch. 167.

[4] Word "employer," inserted by L. 1916, ch. 622.

[5] Following sentence inserted by L. 1915, ch. 167.
[6] Word "penalties" substituted for words "penalty of fifty per centum," by L. 1915, ch. 167.
[7] Remainder of section added by L. 1916, ch. 622.
Compare § 54.

§ 27. **Depositing future payments.**— If an award under this chapter requires payment of [1]death benefits or other compensation by an [2]insurance carrier or employer in periodical payments, [3]the commission may, in its discretion, at any time, [4]any provision of this chapter to the contrary notwithstanding, compute and permit or require to be paid into the state fund an amount equal to the present value of all unpaid [5]death benefits or other compensation [6]in cases in which awards are made for total permanent or permanent partial disability for a period of one hundred and four weeks or more, for which liability exists, [7]together with such additional sum as the commission may deem necessary for a proportionate payment of expenses of administering the fund so created. [8]The moneys so paid in for all death benefits or other compensation to constitute one aggregate and indivisible fund; and thereupon such employer or insurance [9]carrier shall be discharged from any further liability under such award and payment of the same [10]as provided by this chapter shall be assumed by the [11]special [12]fund so created. [13]All computations made by the commission shall be upon the basis of the survivorship annuitants' table of mortality, the remarriage tables of the Dutch Royal Insurance Institution and interest at three and one-half per centum per annum.

[14]Such special fund [15]shall be kept separate and apart from all other moneys of the state fund, and shall not be liable for any [16]losses or expenses of administration of the state fund other than the expenses involved in the administration of such [17]special fund, [18]nor shall the state fund be charged with the losses or expenses of the aggregate special fund beyond the amount of such special fund.

The commission may in like manner, in its discretion, commute and permit or require to be paid, into said aggregate special fund, by one or more resolutions one or more awards computable under this section.

Any portion of such special fund may pursuant to a resolution of the commission approved by the superintendent of insurance be invested in any of the securities in which a life insurance corporation may invest its assets as provided in section one hundred of the insurance law. [*As am'd by L.* 1916 *ch.* 622; *and L.* 1917, *ch.* 705.]

[1] Words "death benefits or other," inserted by L. 1917, ch. 705.
[2] Words "insurance carrier or employer" substituted for words "employer or an insurance corporation," by L. 1917, ch. 705.
[3] Words "and the nature of the injury makes it possible to compute the present value of all future payments with due regard for life contingencies," stricken out by L. 1917, ch. 705.
[4] Words "any provision of this chapter to the contrary notwithstanding" inserted by L. 1917, ch. 705.
[5] Words "death benefits or other" inserted by L. 1917, ch. 705.
[6] Words "in cases . . . four weeks or more," inserted by L. 1917, ch. 705.
[7] Words "together with . . . fund so created, such moneys to constitute an aggregate trust fund" substituted for words "in trust," by L. 1916, ch. 622.
[8] Words "The moneys so paid in . . . indivisible fund" substituted for words "such moneys to constitute an aggregate trust fund," by L. 1917, ch. 705.
[9] Word "carrier" substituted for word "corporation," by L. 1917, ch. 705.

[10] Words "as provided by this chapter," inserted by L. 1917, ch. 705.

[11] Words "trust fund so created" substituted for words "state fund," by L. 1916, ch. 622.

[12] Word "special" substituted for word "trust," by L. 1917, ch. 705.

[13] Following sentence inserted by L. 1917, ch. 705.

[14] Sentence "The moneys so paid into this fund shall constitute an aggregate trust fund and shall be kept separate and apart from all other moneys of the state fund, and shall not be liable for any expenses of administration of the state fund other than the expenses involved in the administration of such trust fund," inserted by L. 1916, ch. 622.

[15] Words "Such special fund" substituted for words "The moneys so paid into this fund shall constitute an aggregate trust fund and," by L. 1917, ch. 705.

[16] Words "losses or," inserted by L. 1917, ch. 705.

[17] Word "special" substituted for word "trust," by L. 1917, ch. 705.

[18] Remainder of section added by L. 1917, ch. 705.

The amendments of L. 1917, ch. 705, to this section, permitting the Commission to require deposit of future payments in the state fund, are intended to offset the decision of the courts in Adams v. N. Y., Ontario & Western R. Co., 175 App. Div. 714; 220 N. Y. Rep.——.

§ 28. Limitation of right to compensation.— The right to claim compensation under this chapter shall be forever barred unless within one year after the injury or if death result therefrom, within one year after such death, a claim for compensation thereunder shall be filed with the commission.

Compare § 116 for exception. For instances of claims barred by time compare Angelucci v. Kerbaugh, S. D. R., vol. 9, p. 387; Rosa v. International Ry. Co., S. D. R., vol. 11, p. ——

§ 29. Subrogation to remedies of employees.— If [1]an employee entitled to compensation under this chapter be injured or killed by the negligence or wrong of another not in the same employ, such injured [2]employee, or in case of death, his dependents, shall, before any suit or [3]any award under this chapter, elect whether to take compensation under this chapter or to pursue his remedy against such other. Such elections shall be evidenced in such manner as the commission may by rule or regulation prescribe. If [4]such injured employee, or in case of death, his dependents, elect to take compensation under this chapter, [5]the awarding of compensation shall operate as an assignment of the cause of action against such other to the state for the benefit of the state insurance fund, if compensation be payable therefrom, and otherwise to the person,[6] association,[6] corporation, [7]or insurance carrier liable for the payment of such compensation, and if he elect to proceed against such other, the state insurance fund, person,[6] association,[6] corporation, [7]or insurance carrier, as the case may be, shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected, and the compensation provided or estimated by this chapter for such case. Such a cause of action assigned to the state may be prosecuted or compromised by the commission. A compromise of any such cause of action by the [2]employee or his dependents at an amount less than the compensation provided for by this chapter shall be made only with the written approval of the commission, if the deficiency of compensation would be payable from the state insurance fund, and otherwise with the written approval of the person, association, corporation, or insurance carrier liable to pay the same. [8]Wherever an employee is killed by the negligence or wrong of another not in the same employ and the dependents of such employee

entitled to compensation under this chapter are minors, such election to take compensation and the assignment of the cause of action against such other and such notice of election to pursue a remedy against such other shall be made by such minor, or shall be made on behalf of such minor by a parent of such minor, or by his or her duly appointed guardian, as the commission may determine by rule in each case. [*As am'd by L.* 1916, *ch.* 622; *and L.* 1917, *ch.* 705.]

[1] Words "an employee" substituted for words "a workman," by L 1916, ch. 622.

[2] Word "employee" substituted for word "workman," by L. 1916, ch. 622.

[3] Words "any award" substituted for word "claim," by L. 1917, ch. 705.

[4] Words "such injured employee, or in case of death, his dependents" substituted for word "he" by L. 1917, ch. 705.

[5] Words "the awarding . . . such other" substituted for words "the cause of action against such other shall be assigned," by L. 1917, ch. 705.

[6] Word "or" stricken out by L. 1916, ch. 622.

[7] Words "or insurance carrier," inserted by L. 1916, ch. 622.

[8] Following sentence added by L. 1916, ch. 622.

The Appellate Division reversed a determination of the Appellate Term, First Department, sustaining action of an employee against his employer as a third party, though the employer had secured compensation; the building where the accident, the collapse of an elevator, occurred, was owned by the employer but was entirely disconnected with his place of business: Winter v. Doelger Brewing Co., 95 Misc. 150; 175 App. Div. 796.

An employee who has elected compensation and received an award is estopped from an action for damages: Miller v. New York Railways Co., 171 App. Div. 316.

An employee may maintain an action for negligence without evidencing his election under this section, but failure so to do excludes him from deficiency compensation: Lester v. Otis Elevator Co., 169 App. Div. 613.

Release of a third party by the injured employee, with or without consideration, does not debar the employee from compensation or the employer's insurance carrier from an action for negligence: Woodward v. Conklin & Son, 171 App. Div. 736.

Election of the action for damages by persons entitled to death benefits does not preclude compensation of others who have no such right of action: Cahill v. Terry & Tench Co., 173 App. Div. 418.

According to U. S. F. & G. Co. v. N. Y. Railways Co., 93 Misc. 118, Appellate Term, First Department, the assignee of a cause of action under this section may not recover damages in excess of the amount of the compensation allowed to the assigning claimant; but according to Casualty Co. of America v. Swett E. L. & P. Co., 174 App. Div. 825, Fourth Department, such assignee should recover full damages impressed with the trust to recompense compensation payments and to account to the claimant for any surplus.

Other suggestive third party cases are: Royal Indemnity Co. v. Platt & Washburn refining Co., 98 Misc. 631; Maley v. O'Boyle, S. D. R., vol. 10, p. 612; and Dietz v. Solamowitz, Bul., vol. 2, p. 102, argued in Appellate Division, May 2, 1917.

§ 30. Revenues or benefits from other sources not to affect compensation. — No benefits, savings or insurance of the injured employee, independent of the provisions of this chapter, shall be considered in determining the compensation or benefits to be paid under this chapter, [1]except that, in case of the death of an employee of the state, a municipal corporation or any other political subdivision of the state, any benefit payable under a pension system which is not sustained in whole or in part by the contributions of the employee, may be applied toward the payment of the death benefit provided by this chapter. [*Section* 30 *am'd by L.* 1914, *ch.* 316.]

[1] Remainder of section added by L. 1914, ch. 316.

§ 31. Agreement for contribution by employee void.— No agreement by an employee to pay any portion of the premium paid by his employer to the state insurance fund or to contribute to a benefit fund or department maintained by such employer or to the cost of mutual insurance or other insurance, maintained for or carried for the purpose of providing compensation as herein required, shall be valid, and any employer who makes a deduction for such purpose from the wages or salary of any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor.

§ 32. Waiver agreements void.— No agreement by an employee to waive his right to compensation under this chapter shall be valid.

A contract provision by which each party exempts the other from all acts of fault or omission is ineffective: Powley v. Vivian & Co., 169 App. Div. 176. Compare Crotty v. Pa. R. R. Co., S. D. R., vol. 9, p. 364.

§ 33. Assignments; exemptions.— Claims for compensation or benefits due under this chapter shall not be assigned, released or commuted except as provided by this chapter, and shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived. Compensation and benefits shall be paid only to employees or their dependents.

"Except as provided," compare § 29.

Release of the employer by an administrator for a consideration does not debar dependents from compensation: Buell v. N. Y. C. & H. R. R. R. Co., S. D. R., vol. 6, pp. 361, 377. Compare Woodward v. Conklin & Son, 171 App. Div. 736; Jenkins v. Hogan & Sons, 177 App. Div. 41.

An employee may not assign to his physician an award of compensation for medical treatment: Bloom v. Jaffe, 94 Misc. 222.

§ 34. Preferences.— The right of compensation granted by this chapter [1]and any awards made thereunder shall have the same preference or lien without limit of amount against the assets of the employer as is now or hereafter may be allowed by law for a claim for unpaid wages for labor. [*As am'd by L.* 1916, *ch.* 622.]

[1] Words "and any awards made thereunder," inserted by L. 1916, ch. 622.

ARTICLE 3

SECURITY FOR COMPENSATION

Section 50. Security for payment of compensation.
51. Posting of notice regarding compensation.
52. Effect of failure to secure compensation.
53. Release from all liability.
54. The insurance contract.

§ 50. Security for payment of compensation.— An employer shall secure compensation to his employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation in the state fund, or

2. By insuring and keeping insured the payment of such compensation with any stock corporation or mutual association authorized to transact the business of workmen's compensation insurance in this state. If insurance be so effected in such a corporation or mutual association the employer shall forthwith file with the commission, in form prescribed by it, a notice specifying the name of such insurance corporation or mutual association [1]and such

information regarding the policies as the commission may require. [*Subd.* 2 *am'd by L.* 1916, *ch.* 622.]

[1] Words "and such information regarding the policies as the Commission may require" substituted for words "together with a copy of the contract or policy of insurance," by L. 1916, ch. 622.

Mutual employers' liability and workmen's compensation corporations are governed by the insurance law, §§ 185–194, as added by L. 1913, ch. 832, and amended by L. 1915, ch. 506, and L 1917, ch. 264, and § 67, as added by L. 1914, ch. 16.

3. By furnishing satisfactory proof to the commission of his financial ability to pay such compensation for himself, in which case the commission may, in its discretion, require the deposit with the commission of securities of the kind prescribed in section thirteen of the insurance law, in an amount to be determined by the commission, to secure his liability to pay the compensation provided in this chapter. [1]The commission may also require an agreement on the part of an employer to pay any awards commuted under section twenty-seven of this act, into the special fund of the state fund, as a condition of his being allowed to remain uninsured pursuant to this section. [2]The commission shall have the authority to revoke its consent furnished under this section at any time for good cause shown.

[1] Following sentence inserted by L. 1917, ch. 705.

[2] Following sentence added by L. 1916, ch. 622.

If an employer fail to comply with this section, he shall be liable to a penalty[1] during which such failure continues of [2]an amount equal to the pro rata premium which would have been payable for insurance in the state fund for such period of noncompliance to be recovered in an action brought by the commission.

[1] Words "for every day" stricken out by L. 1914, ch. 316.

[2] Words "an amount . . . of non-compliance" substituted for words "one dollar for every employee," by L. 1914, ch. 316.

The commission may, in its discretion, for good cause shown, remit any such penalty, provided the employer in default secure compensation as provided in this section. [*Subd.* 3 *am'd by L.* 1914, *ch.* 316; *L.* 1916, *ch.* 622; *and L.* 1917, *ch.* 705.

Relative to failure to secure compensation, §§ 11, 50 and 52 should be read together.

§ 51. **Posting of notice regarding compensation.**—Every employer who has complied with section fifty of this chapter shall post and maintain in a conspicuous place or places in and about his place or places of business typewritten or printed notices in form prescribed by the commission, stating the fact that he has complied with all the rules and regulations of the commission and that he has secured the payment of compensation to his employees and their dependents in accordance with the provisions of this chapter.

§ 52. **Effect of failure to secure compensation.**—Failure to secure the payment of compensation shall [1]constitute a misdemeanor and have the effect of enabling the injured employee, or [2]in case of death, his dependents [3]or legal representatives, to maintain an action for damages in the courts, as prescribed by section eleven of this chapter. [*As am'd by L.* 1916, *ch.* 622.]

[1] Words "constitute a misdemeanor and," inserted by L. 1916, ch. 622.

[2] Words "in case of death," inserted by L. 1916, ch. 622.

[3] Words "or legal representatives," inserted by L. 1916, ch. 622.

Relative to failure to secure compensation, §§ 11, 50 and 52 should be read together; relative to words "dependents or legal representatives" compare note to § 11.

§ 53. Release from all liability.— An employer securing the payment of compensation by contributing premiums to the state fund shall thereby become relieved from all liability for personal injuries or death sustained by his employees, and the persons entitled to compensation under this chapter shall have recourse therefor only to the state fund and not to the employer. An employer shall not otherwise be relieved from the liability for compensation prescribed by this chapter except by the payment thereof by himself or his insurance carrier.

Compare § 11. Release from all liability has been upheld by the Court of Appeals in Shanahan v. Monarch Engineering Co., 219 N. Y. 469.

§ 54. The insurance contract.— 1. Right of recourse to the insurance carrier. Every policy of insurance covering the liability of the employer for compensation issued by a stock company or by a mutual association authorized to transact workmen's compensation insurance in this state shall contain a provision setting forth the right of the commission to enforce in the name of the people of the state of New York for the benefit of the person entitled to the compensation insured by the policy either by filing a separate application or by making the insurance carrier a party to the original application. the liability of the insurance carrier in whole or in part for the payment of such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance carrier shall to the extent thereof be a bar to the recovery against the other of the amount so paid.

2. Knowledge and jurisdiction of the employer extended to cover the insurance carrier. Every such policy shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this chapter, be jurisdiction of the insurance carrier and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation under the provisions of this chapter.

3. Insolvency of employer does not release the insurance carrier. Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve the insurance carrier from the payment of compensation for injuries or death sustained by an employee during the life of such policy.

4. Limitation of indemnity agreements. Every contract or agreement of an employer the purpose of which is to indemnify him from loss or damage on account of the injury of an employee by accidental means, or on account of the negligence of such employer or his officer, agent or servant, shall be absolutely void unless it shall also cover liability for the payment of the compensation provided for by this chapter.

5. Cancellation of insurance contracts. No contract of insurance issued by an insurance carrier against liability arising under this chapter shall be cancelled within the time limited in such contract for its expiration until at

least ten days after [2]a notice of [3]cancellation of such contract, on a date specified in such notice, shall be filed in the office of the commission and also served on the employer. Such notice shall be served on the employer by delivering it to him or by sending it by mail, by registered letter, addressed to the employer at his or its last known place of residence; provided that, if the employer be a partnership, then such notice may be so given to any one of the partners, and if the employer be a corporation then the notice may be given to any agent or officer of the corporation upon whom legal process may be served. [4]Provided, however, the right to cancellation of a policy of insurance in the state fund shall be exercised only for nonpayment of premiums. [*Subd.* 5 *am'd by L.* 1916, *ch.* 622.]

[1] Words "an insurance carrier" substituted for words "a stock company or mutual association," by L. 1916, ch. 622.

[2] Word "a," inserted by L. 1916, ch. 622.

[3] Words "cancellation of" substituted for words "intention to cancel," by L. 1916, ch. 622.

[4] Following sentence added by L. 1916, ch. 622.

Sections 54 and 20 are to be read together. The Commission has full jurisdiction of disputes between employer and insurer according to an opinion of the Attorney-General rendered August 16, 1915. Compare Gibbons v. Tager Contracting Co., S. D. R., vol. 5, p. 434; 174 App. Div. 900; Bloom v. Tilin & Bleck, S. D. R., vol. 5, p. 441; Skoczlois v Vinocur, S. D. R., vol. 7, p. 443; 176 App. Div. 924: Hargraves v. Shevlin Mfg. Co., S. D. R., vol. 10, p. 641; and Newman v. Singer, Bul., vol. 2, p. 106. The ruling in the Hargraves case was unanimously affirmed by the Appellate Division, July 3, 1917; the decision in the Skoczlois case was reversed by the Court of Appeals, with opinion, July 11, 1917.

6. Any insurance carrier may issue policies, including with employees, employers who perform labor incidental to their occupations, such policies insuring to such employers the same compensations provided for their employees, and at the same rates; provided, however, that the estimation of their wage values, respectively, shall be reasonable and separately stated in and added to the valuation of their pay rolls upon which their premium is computed. The employer so insured shall have the same rights and remedies given an employee by this chapter. [*Subd.* 6 *added by L.* 1916, *ch.* 622.]

ARTICLE 4

STATE WORKMEN'S COMPENSATION COMMISSION

Section 60. State workmen's compensation commission.*
61. Secretary, deputies and other employees.*
62. Salaries and expenses.
63. Office.
64. Sessions of commission.
65. Powers of individual commissioners and deputy commissioners.
66. Powers and duties of secretary.
67. Rules.
68. Technical rules of evidence or procedure not required.
69. Issue of subpoena; penalty for failure to obey.
70. Recalcitrant witnesses punishable as for contempt.
71. Fees and mileage of witnesses.
72. Depositions.
73. Transcript of stenographer's minutes; effect as evidence.

* §§ 60, 61, of the Workmen's Compensation Law were repealed, and the functions of the Workmen's Compensation Commission transferred to the newly created Industrial Commission, by L. 1915, ch. 674, §§ 2–8. For organization and functions of the Industrial Commission, compare Labor Law, §§ 40–52-e.

Section 74. Jurisdiction of commission to be continuing.
75. Report of commission.
76. Commission to furnish blank forms.
77. Expenses of administering commission.

§ 62. [1]Expenses.—[2]The commission may [3]make the necessary expenditure to obtain statistical and other information to establish classifications of employments with respect to hazards and risks. The [4]expenses of the commission, including the premiums to be paid by the state treasurer for the bond to be furnished by him, shall be paid out of the state treasury upon vouchers signed by at least two commissioners. [*As am'd by L.* 1915, *ch.* 674.]

[1] Words "Salaries and," stricken out of side-title by L. 1915, ch. 674.

[2] Words "The chairman of the commission shall receive an annual salary of ten thousand dollars, and each other commissioner, an annual salary of seven thousand dollars. The secretary shall receive an annual salary of five thousand dollars. The commissioners and their subordinates shall be entitled to their actual and necessary expenses while traveling on the business of the commission," stricken out by L. 1915, ch. 674.

Word "also," stricken out by L. 1915, ch. 674.

Words "salaries and compensation of the subordinates and all other," stricken out by L. 1915, ch. 674.

§ 63. Office.—The commission shall keep and maintain its principal office in the city of Albany, in rooms in the capitol assigned by the trustees of public buildings. The office shall be supplied with necessary office furniture, supplies, books, maps, stationery, telephone connections and other necessary appliances, at the expense of the state, payable in the same manner as other expenses of the commission.

§ 64. Sessions of commission.—The commission shall be in continuous session and open for the transaction of business during all business hours of every day excepting Sundays and legal holidays. All sessions shall be open to the public and may be adjourned, upon entry thereof in its records, without further notice. Whenever convenience of parties will be promoted or delay and expense prevented, the commission may hold sessions in cities other than the city of Albany. A party may appear before such commission and be heard in person or by attorney. Every vote and official act of the commission shall be entered of record, and the records shall contain a record of each case considered, and the award, decision or order made with respect thereto, and all voting shall be by the calling of each commissioner's name by the secretary and each vote shall be recorded as cast. A majority of the commission shall constitute a quorum. A vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the full commission so long as a majority remains.

Information acquired by the Commission from employers or employees is not open to public inspection, § 105.

For practice of the Commission relative to its sessions compare Bul., vol. 1. No. 3, p. 2, No. 7, p. 1, No. 8, p. 15, No. 9, p. 52, No. 10, p. 1; vol. 2, p. 50.

§ 65. Powers of individual commissioners and deputy commissioners.—Any investigation, inquiry or hearing which the commission is authorized to hold or undertake may be held or taken by or before any commissioner or deputy commissioner, and the award, decision or order of a commissioner or deputy commissioner, when approved and confirmed by the commission and ordered filed in its office, shall be deemed to be the award, decision or

order of the commission. Each commissioner and deputy shall, for the purposes of this chapter, have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony. The commission may authorize any deputy to conduct any such investigation, inquiry or hearing, in which case he shall have the power of a commissioner in respect thereof.

§ 66. **Powers and duties of secretary.**— The secretary of the commission shall:

1. Maintain a full and true record of all proceedings of the commission, of all documents or papers ordered filed by the commission, of decisions or orders made by a commissioner or deputy commissioner, and of all decisions or orders made by the commission or approved and confirmed by it and ordered filed, and he shall be responsible to the commission for the safe custody and preservation of all such documents at its office;

2. Have power to administer oaths in all parts of the state, so far as the exercise of such power is properly incident to the performance of his duty or that of the commission;

3. Designate, from time to time, with the approval of the commission, one of the clerks appointed by the commission to exercise the powers and duties of the secretary during his absence;

4. Under the direction of the commission, have general charge of its office, superintend its clerical business, and perform such other duties as the commission may prescribe.

The duties prescribed by this section devolve upon the secretary of the Industrial Commission under the Labor Law, § 49.

§ 67. **Rules.**— The commission shall adopt reasonable rules, not inconsistent with this chapter, regulating and providing for

1. The kind and character of notices, and the service thereof, in case of accident and injury to employees;

2. The nature and extent of the proofs and evidence, and the method of taking and furnishing the same, to establish the right to compensation;

3. The forms of application for those claiming to be entitled to compensation;

4. The method of making investigations, physical examinations and inspections;

5. The time within which adjudications and awards shall be made;

6. The conduct of hearings, investigations and inquiries;

7. The giving of undertakings by all subordinates who are empowered to receive and disburse moneys, to be approved by the attorney-general as to form and by the comptroller as to sufficiency;

8. Carrying into effect the provisions of this chapter.

9. The collection, maintenance and disbursement of the state insurance fund. [*Punctuation of* § 67 *am'd by L.* 1916, *ch.* 622.]

Under subdivision 9 the Commission has power to cancel state fund insurance policies and to make rules relative to cancellation: Opinion of Attorney-General, February 11, 1916.

§ 68. **Technical rules of evidence or procedure not required.**— The commission or a commissioner or deputy commissioner in making an investigation

or inquiry or conducting a hearing shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter; but may make such investigation or inquiry or conduct such hearing in such manner as to ascertain the substantial rights of the parties.

Section 67, above, requires the Commission to adopt reasonable rules of evidence, not inconsistent with the Workmen's Compensation Law.

The courts have repeatedly emphasized the independence of precedents permitted and suggested by this section: Rheinwald v. Builders' Brick & Supply Co., 168 App. Div. 425; Kenny v. Union Railway Co., 166 App. Div. 497; Carroll v. Knickerbocker Ice Co., 169 App. Div. 450; 218 N. Y. 435; Dale v. Saunders Bros., 171 App. Div. 528; 218 N. Y. 59.

The Appellate Division reversed and remanded award proceedings in which the Commission had denied the insurance carrier opportunity to cross-examine the claimant: Ramsey v. Fairbanks-Morse & Co., 171 App. Div. 959.

Compare § 23, above, note relative to evidence. The Appellate Division having upheld an award upon hearsay evidence, the Court of Appeals, reversing the decision, held that § 68 simply allows the Commission in its discretion to accept hearsay or any other kind of evidence but does not authorize it to make an award unsupported by "a residuum of legal evidence": Carroll v. Knickerbocker Ice Co., 169 App. Div. 450; 218 N. Y. 435.

§ 69. **Issue of subpoena; penalty for failure to obey.**— A subpoena shall be signed and issued by a commissioner, a deputy commissioner or by the secretary of the commission and may be served by any person of full age in the same manner as a subpoena issued out of a court of record. If a person fail, without reasonable cause, to attend in obedience to a subpoena, or to be sworn or examined or answer a question or produce a book or paper, or to subscribe and swear to his deposition after it has been correctly reduced to writing, he shall be guilty of a misdemeanor.

§ 70. **Recalcitrant witnesses punishable as for contempt.**— If a person in attendance before the commission or a commissioner or deputy commissioner refuses, without reasonable cause, to be examined, or to answer a legal and pertinent question or to produce a book or paper, when ordered so to do by the commission or a commissioner or deputy commissioner, the commission may apply to a justice of the supreme court upon proof by affidavit of the facts for an order returnable in not less than two nor more than five days directing such person to show cause before the justice who made the order, or any other justice of the supreme court, why he should not be committed to jail. Upon the return of such order the justice shall examine under oath such person and give him an opportunity to be heard; and if the justice determine that he has refused without reasonable cause or legal excuse to be examined or to answer a legal and pertinent question, or to produce a book or paper which he was ordered to bring, he may forthwith, by warrant, commit the offender to jail, there to remain until he submits to do the act which he was so required to do or is discharged according to law.

§ 71. **Fees and mileage of witnesses.**— Each witness who appears in obedience to a subpoena before the commission or a commissioner or deputy commissioner, or person employed by the commission to obtain the required information, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the supreme court, which shall be audited and paid from the state treasury in the same manner as other expenses of the commission. A witness subpoenaed at the instance of a party other than the

commission, a commissioner, deputy commissioner or person acting under the authority of the commission shall be entitled to fees or compensation from the state treasury, if the commission certify that his testimony was material to the matter investigated, but not otherwise.

§ 72. **Depositions.**— The commission may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the supreme court.

§ 73. **Transcript of stenographer's minutes; effect as evidence.**— A transcribed copy of the testimony, evidence and procedure or of a specific part thereof, or of the testimony of a particular witness or of a specific part thereof, on any investigation, by a stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript thereof and to have been carefully compared by him with his original notes, may be received in evidence by the commission with the same effect as if such stenographer were present and testified to the facts so certified, and a copy of such transcript shall be furnished on demand to any party upon payment of the fee provided for a transcript of similar minutes in the supreme court.

§ 74. **Jurisdiction of commission to be continuing.**— The power and jurisdiction of the commission over each case shall be continuing, and it may, from time to time, make such modification or change with respect to former findings or orders relating thereto, as in its opinion may be just.

Compare § 22.

This continuing jurisdiction is not cut off by appeal; the Commission may review a case though it has been carried to the courts: McNally v. Diamond Mills Paper Co., S. D. R., vol. 9, p. 352 (Reversed by Appellate Division, May 2, 1917.) Other cases specially illustrative are: Lupke v. Simon, Bul., vol. 2, p. 45; and Adler v. Thomashefsky, S. D. R., vol. 9, p. 348.

§ 75. **Report of commission.**— Annually on or before the first day of February, the commission shall make a report to the legislature, which shall include a statement of the number of awards made by it and the causes of the accidents leading to the injuries for which the awards were made, a detailed statement of the expenses of the commission, the condition of the state insurance fund, together with any other matter which the commission deems proper to report to the legislature, including any recommendations it may desire to make.

L. 1916, ch. 622, although including it, made no change in this section.

§ 76. **Commission to furnish blank forms.**— The commission shall prepare and cause to be distributed so that the same may be readily available blank forms of application for compensation, notice to employers, proofs of injury or death, of medical or other attendance or treatment, of employment and wage earnings, and for such other purposes as may be required. Insured employers shall constantly keep on hand a sufficient supply of such blanks.

§ 77. **Expenses of administering commission.**— As soon as practicable after July first, nineteen hundred and seventeen, and annually thereafter, the commission shall ascertain the total amount of its expenses incurred during the preceding fiscal year, in connection with the administration of the workmen's compensation law, and shall thereupon assess upon and collect from each insurance carrier, including the state insurance fund, the proportion of such

expense that the total compensation or payments made by such carrier in such year bore to the total compensation or payments made by all insurance carriers. The amounts so secured shall be transferred to the state treasury to reimburse it for this portion of the expense of administering this chapter. [*Added by L.* 1916, *ch.* 622.]

Compare § 94. Under §§ 26 and 110 all penalties imposed by the Workmen's Compensation Law are applicable to the expenses of the Commission. For references to penalties see note to § 110.

The Commission obtains its basis for assessing expenses by requiring insurance carriers to make sworn statements of their compensation payments, excluding payments for medical services, at the end of each quarter of the fiscal year: Bul., vol. 2, p. 17.

ARTICLE 5

STATE INSURANCE FUND

Section 90. Creation of state fund.
91. State treasurer custodian of fund.
92. Surplus and reserve.
93. Investment of surplus or reserve.
94. Administration expense.
95. Classification of risks and adjustment of premiums.
96. Associations for accident prevention.
97. Requirements in classifying employment and fixing and adjusting premium rates.
98. Time of payment of premiums.
99. Action for collection in case of default.
100. Withdrawal from fund.
101. Audit of payrolls.
102. Falsification of payroll.
103. Wilful misrepresentation.
104. Inspections.
105. Disclosures prohibited.
106. Reports of state insurance fund: examination by insurance department.

§ 90. **Creation of state fund.**— There is hereby created a fund to be known as "the state insurance fund," for the purpose of insuring employers against liability under this chapter and of assuring to the persons entitled thereto the compensation provided by this chapter. Such fund shall consist of all premiums received and paid into the fund, of property and securities acquired by and through the use of moneys belonging to the fund and of interest earned upon moneys belonging to the fund and deposited or invested as herein provided. Such fund shall be administered by the commission without liability on the part of the state beyond the amount of such fund. Such fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of expenses in the manner provided in this chapter.

§ 91. **State treasurer custodian of fund.**— The state treasurer shall be the custodian of the state insurance fund; and all disbursements therefrom shall be paid by him upon vouchers authorized by the commission and signed by any two members thereof. The state treasurer shall give a separate and additional bond in an amount to be fixed by the governor and with sureties approved by the state comptroller conditioned for the faithful performance of his duty as custodian of the state fund. The state treasurer may deposit any portion of the state fund not needed for immediate use, in the manner

and subject to all the provisions of law respecting the deposit of other state funds by him. Interest earned by such portion of the state insurance fund deposited by the state treasurer shall be collected by him and placed to the credit of the fund.

§ 92. **Surplus and [1]reserves.**—Ten per centum of the premiums collected from employers insured in the fund shall be set aside by the commission for the creation of a surplus until such surplus shall amount to the sum of one hundred thousand dollars, and thereafter five per centum of such premiums, until such time as in the judgment of the commission such surplus shall be sufficiently large to cover the catastrophe hazard. The commission shall also set up and maintain [2]reserves adequate to meet anticipated losses and carry all claims and policies to maturity, [3]which reserves shall be computed in accordance with such rules as shall be approved by the superintendent of insurance. [*As am'd by L.* 1916, *ch.* 622.]

[1] Word "reserves" substituted for word "reserve," by L. 1916, ch. 622.
[2] Word "reserves" substituted for words "a reserve," by L. 1916, ch. 622.
[3] Remainder of sentence added by L. 1916, ch. 622.

§ 93. **Investment of surplus or reserve.**—[1]Any of the surplus or reserve funds belonging to the state insurance fund may, pursuant to a resolution of the commission approved by the superintendent of insurance, be invested in or loaned on the pledge of any of the securities in which deposits of insurance corporations are required to be invested pursuant to section thirteen of the insurance law, or in the public stocks or bonds of any one of the United States, or in bonds and mortgages on improved unencumbered real property in this state worth fifty per centum more than the amount loaned thereon. All such securities or evidences of indebtedness shall be placed in the hands of the state treasurer who shall be the custodian thereof. He shall collect the principal and interest thereof, when due, and pay the same into the state insurance fund. The state treasurer shall pay all vouchers drawn on the state insurance fund for the making of such investments when signed by two members of the commission, upon delivery of such securities or evidences of indebtedness to him, when there is attached to such vouchers a certified copy of the resolution of the commission authorizing the investment. The commission may, upon like resolution approved by the [2]superintendent of insurance, sell any of such securities. [*As am'd by L.* 1916, *ch.* 622.]

[1] Sentence "Any of the surplus . . . loaned thereon" substituted for sentence "The commission may, pursuant to a resolution of the commission approved by the comptroller, invest any of the surplus or reserve funds belonging to the state insurance fund in the same securities and investments authorized for investment by savings banks," by L. 1916, ch. 622.
[2] Words "superintendent of insurance" substituted for word "comptroller," by L. 1916, ch. 622.
Compare Attorney-General's letter of October 23, 1915, relative to custody and investment of state fund surplus and reserves: Special Bulletin, No. 81, p. 348.

§ 94. **Administration expense.**—The entire expense of administering the state insurance fund shall be paid in the first instance by the state, out of moneys appropriated therefor. In the month of [1]July, nineteen hundred and [2]seventeen, and annually thereafter in such month, the commission shall ascertain the just amount incurred by the commission during the preceding [3]fiscal

year, in the administration of the state insurance fund,[4] and shall refund such amount to the state treasury. If there be employees of the commission other than the commissioners themselves and the secretary whose time is devoted partly to the general work of the commission and partly to the work of the state insurance fund, and in case there is other expense which is incurred jointly on behalf of the general work of the commission and the state insurance fund, an equitable apportionment of the expense shall be made for such purpose and the part thereof which is applicable to the state insurance fund shall be chargeable thereto.[5] [*As am'd by L.* 1916, *ch.* 622.]

[1] Word "July" substituted for word "January," by L. 1916, ch. 622.

[2] Word "seventeen" substituted for word "eighteen" by L. 1916, ch. 622.

[3] Word "fiscal" substituted for word "calendar" by L. 1916, ch. 622.

[4] Words "exclusive of the expense for the examination, determination and payment of claims," stricken out by L. 1916, ch. 622.

[5] Concluding provisions for calculation and assessment of administrative expense stricken out by L. 1916, ch. 622.

Under §§ 26 and 110 all penalties imposed by the Workmen's Compensation Law are applicable to the expenses of the Commission.

§ 95. Classification of risks and adjustment of premiums.— Employments coming under the provisions of this chapter shall be divided for the purposes of the state fund, into the groups set forth in section two of this chapter. Separate accounts shall be kept of the amounts collected and expended in respect to each such group for convenience in determining equitable rates; but for the purpose of paying compensation the state fund shall be deemed one and indivisible. The commission shall have power to rearrange any of the groups set forth in section two by withdrawing any employment embraced in it and transferring it wholly or in part to any other group, and from such employments to set up new groups at its discretion. The commission shall determine the hazards of the different classes composing each group and fix the rates of premiums therefor based upon the total payroll and number of employees in each of such classes of employment at the lowest possible rate consistent with the maintenance of a solvent state insurance fund and the creation of a reasonable surplus and reserve; and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each individual risk.

For the purpose of keeping accounts and computing dividends the Commission, June 25, 1915, regrouped the forty-two groups of § 2 into six groups: Annual Report, 1915, p. 147. To these general groups the Commission has added special groups from time to time; e. g., special road builders' group, special laundrymen group.

The limitations upon the power of the Commission to group a single employer by himself for rating and dividend purposes have been set forth in an opinion of the Attorney-General, S. D. R., vol. 6, p. 476, January 26, 1916.

Beginning January 1, 1917, the state fund adopted the plan of classifications used by the private casualty insurance companies for underwriting business: Bul., vol. 2, p. 2.

Under § 67 of the Insurance Law, added by L. 1914, ch. 16, risks and premiums of workmen's compensation, other than those of the state fund, must be filed by private insurance corporations or associations with the superintendent of insurance and must be approved by him before gong into effect.

§ 96. Associations for accident prevention.— The employers in any of the groups described in section two or established by the commission may with the approval of the commission form themselves into an association for accident prevention, and may make rules for that purpose. If the commission

is of the opinion that an association so formed sufficiently represents the employers in such group, it may approve such rules, and when so approved and approved by the industrial board of the labor department they shall be binding on all employers in such group. If such an approved association appoint an inspector or expert for the purpose of accident prevention, the commission may at its discretion provide in whole or in part for the payment of the remuneration and expenses of such inspector or expert, such payment to be charged in the accounting to such group. Every such approved association may make recommendations to the commission concerning the fixing of premiums for classes of hazards, and for individual risks within such group.

For the powers and duties of directors of mutual employers' liability and workmen's compensation corporations relative to accident prevention, compare Insurance Law, § 193.

§ 97. **Requirements in classifying employment and fixing and adjusting premium rates.**— The following requirements shall be observed in classifying employments and fixing and adjusting premium rates:

1. The commission shall keep an accurate account of the money paid in premiums by each of the several classes of employments or industries, and the disbursements on account of injuries and deaths of employees thereof, including the setting up of reserves adequate to meet anticipated losses and to carry the claims to maturity, and also, on account of the money received from each individual employer and the amount disbursed from the state insurance fund on account of injuries and death of the employees of such employer, including the reserves so set up;

2. On January first, nineteen hundred and fifteen, and every fifth year thereafter, and at such other times as the commission, in its discretion, may determine, a readjustment of the rate shall be made for each of the several groups of employment or industries and of each hazard class therein, which, in the judgment of the commission, shall have developed an average loss ratio, in accordance with the experience of the commission in the administration of the law as shown by the accounts kept as provided herein;

3. If any such accounting show an aggregate balance (deemed by the commission to be safely and properly [1]divisible) remaining to the credit of any class of employment or industry, after the amount required shall have been credited to the surplus and reserve funds and after the payment of all awards for injury or death lawfully chargeable against the same, the commission may in its discretion credit to each individual member of such group, who shall have been a subscriber to the state insurance fund for a period of six months or more prior to the time of such readjustment, and whose premium or premiums exceed the amount of the disbursements from the fund on account of injuries or death of his employees during such period, on the instalment or instalments of premiums next due from him such proportion of such balance as the amount of his prior paid premiums sustains to the whole amount of such premiums paid by the group to which he belongs since the last readjustment of rates. [2] In the event that any member of the group who has heretofore or shall hereafter withdraw would have become entitled to such dividend if he had remained in the fund the commission is empowered to pay the amount of the dividend to such employer. [*Subd.* 3 *am'd by L.* 1916, *ch.* 622.]

[1] Word "divisible" substituted for word "devisable," by L. 1914, ch. 41.

[2] Following sentence added by L. 1916, ch. 622.

Workmen's Compensation dividends of private insurance carriers must be approved by the state superintendent of insurance: L. 1913, ch. 832, as am'd by L. 1916, ch. 393.

4. If the amount of premiums collected from any employer at the beginning of any period of [1]twelve months is ascertained and calculated by using the estimated expenditure of wages for the period of time covered by such premium payment as a basis, an adjustment of the amount of such premium shall be made at the end of such [1]twelve months, and the actual amount of such premium shall be determined in accordance with the amount of the actual expenditure of wages for such period; and, if such wage expenditure for such period is less than the amount on which such estimated premium was collected, such employer shall be entitled to receive a refund from the state insurance fund of the difference between the amount so paid by him and the amount so found to be actually due, or to have the amount of such difference credited on succeeding premium payments, at his option; and if such actual premium, when so ascertained, exceeds in amount a premium so paid by such employer at the beginning of such [1]twelve months, such employer shall immediately upon being advised of the true amount of such premium due forthwith pay to the treasurer of the state an amount equal to the difference between the amount actually found to be due and the amount paid by him at the beginning of such [1]twelve months period. [*Subd.* 4 *am'd by L.* 1917, *ch.* 705.]

[1] Word "twelve" substituted for word "six" by L. 1917, ch. 705.

§ 98. **Time of payment of premiums.**— Except as otherwise provided in this chapter, all premiums shall be paid by every employer into the state insurance fund on or before July first, nineteen hundred and fourteen, and semi-annually thereafter, or at such other time or times as may be prescribed by the commission. The commission shall mail a receipt for the same to the employer and place the same to the credit of the state insurance fund in the custody of the state treasurer.

§ 99. **Action for collection in case of default.**— If an employer shall default in any payment required to be made by him to the state insurance fund, the amount due from him shall be collected by civil action against him in the name of the people of the state of New York, and it shall be the duty of the commission on the first Monday of each month after July first, nineteen hundred and fourteen, to certify to the attorney-general of the state the names and residences, or places of business, of all employers known to the commission to be in default for such payment or payments for a longer period than five days and the amount due from such employer, and it shall then be the duty of the attorney-general forthwith to bring or cause to be brought against each such employer a civil action in the proper court for the collection of such amount so due, and the same when collected, shall be paid into the state insurance fund, and such employer's compliance with the provisions of this chapter requiring payments to be made to the state insurance fund shall date from the time of the payment of said money so collected as aforesaid to the state treasurer for credit to the state insurance fund.

Justices of the peace have cognizance of civil actions for premiums due the state insurance fund not exceeding two hundred dollars: Code of Civil Procedure, § 2863, subd. 1, as am'd by L. 1917, ch. 772.

§ 100. **Withdrawal from fund.**— Any employer may, upon complying with subdivision two or three of section fifty of this chapter, withdraw from the fund by turning in his insurance contract for cancellation, provided he is not in arrears for premiums due the fund and has given to the commission written notice of his intention to withdraw within thirty days before the expiration of the period for which he has elected to insure in the fund; provided that in case any employer so withdraws, his liability to assessments shall, notwithstanding such withdrawal, continue for one year after the date of such withdrawal as against all liabilities for such compensation accruing prior to such withdrawal. [*As am'd by L.* 1916, *ch.* 622.]

This section re-enacted without change by L. 1916, ch. 622.

This reference to assessment is the only use of the word in the Workmen's Compensation Law. The Attorney-General, in an opinion of July 16, 1915, has held that assessments cannot be levied.

§ 101. **Audit of payrolls.**— Every employer who is insured in the state insurance fund shall keep a true and accurate record of the number of his employees and the wages paid by him, and shall furnish to the commission, upon demand, a sworn statement of the same. Such record shall be open to inspection at any time and as often as the commission shall require to verify the number of employees and the amount of the payroll.

For a case involving payroll records compare Reddy v. National Excavating Co., S. D. R., vol. 10, p. 621; —— App. Div. ——, May 2, 1917.

§ 102. **Falsification of payroll.**— An employer who shall wilfully misrepresent the amount of the payroll upon which the premiums chargeable by the state insurance fund is to be based shall be liable to the state in ten times the amount of the difference between the premiums paid and the amount the employer should have paid had his payroll been correctly computed and the liability to the state under this section shall be enforced in a civil action in the name of the state insurance fund, and any amount so collected shall become a part of such fund.

§ 103. **Wilful misrepresentation.**— Any person who wilfully misrepresents any fact in order to obtain insurance in the state insurance fund at less than the proper rate for such insurance, or in order to obtain payment out of such fund, shall be guilty of a misdemeanor.

§ 104. **Inspections.**— The commission shall have the right to inspect the plants and establishments of employers insured in the state insurance fund; and the inspectors designated by the commission shall have free access to such premises during regular working hours.

§ 105. **Disclosures prohibited.**— Information acquired by the commission or its officers or employees from employers or employees pursuant to this chapter shall not be opened to public inspection, and any officer or employee of the commission who, without authority of the commission or pursuant to its rules or as otherwise required by law shall disclose the same shall be guilty of a misdemeanor.

The Commission's sessions are open to the public: § 64.

§ 106. **Reports of state insurance fund; examination by insurance department.**— The commission shall make reports to the superintendent of insurance

concerning the state insurance fund at the same times and in the same manner as is required from mutual employers' liability and workmen's compensation corporations by section one hundred and ninety-two of the insurance law, and the superintendent of insurance may examine into the condition of such state insurance fund at any time, either personally or by any duly authorized examiner appointed by him, for the purpose of determining the condition of the investments and the adequacy of the reserves of such fund. [*Added by L.* 1916, *ch.* 622.]

ARTICLE 6

MISCELLANEOUS PROVISIONS

Section 110. Penalties applicable to expense of commission.
111. Record and report of injuries by employers.
112. Information to be furnished by employer.
113. Inspection of records of employers.
114. Interstate commerce.
115. Penalties for false representations.
116. Limitation of time.
117. Duties of commissioner of labor.
118. Unconstitutional provisions.
119. Actions or causes of action pending.

§ 110. Penalties applicable to expenses of commission.— All penalties imposed by this chapter shall be applicable to the expenses of the commission. When collected by the commission such penalties shall be paid into the state treasury and be thereafter appropriated by the legislature for the purposes prescribed by this section.

Penalties are prescribed by §§ 26, 31, 50, 52, 69, 102, 103, 105, 111, 115. Actions for their recovery may be brought under § 26.

§ 111. Record and report of injuries by employers.— Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within ten days after the occurrence of an accident resulting in personal injury a report thereof shall be made in writing by the employer to the commission upon blanks to be procured from the commission for that purpose. Such report shall state the name and nature of the business of the employer, the location of his establishment or place of work, the name, address and occupation of the injured employee, the time, nature and cause of the injury and such other information as may be required by the commission. An employer who refuses or neglects to make a report as required by this section shall be guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars.

Compare Labor Law, §§ 20-a, 87 and 126.

In regard to evidence of accidental injury, §§ 18, 21 and 111 are to be read together. The employer's failure to give the details required by § 111 has told against him in McQueeney v. Sutphen & Myer, 167 App. Div. 528; Kohler v. Frohmann, 167 App. Div. 533; and Powley v. Vivian & Co., 169 App. Div. 170.

§ 112. Information to be furnished by employer.— Every employer shall furnish the commission, upon request, any information required by it to carry out the provisions of this chapter. The commission, a commissioner, deputy commissioner, or any person deputized by the commission for that purpose, may examine under oath any employer, officer, agent or employee. An employer or an employee receiving from the commission a blank with directions to file the same shall cause the same to be properly filled out

so as to answer fully and correctly all questions therein, or if unable to do so, shall give good and sufficient reasons for such failure. Answers to such questions shall be verified under oath and returned to the commission within the period fixed by the commission therefor.

§ 113. Inspection of records of employers.— All books, records and payrolls of the employers showing or reflecting in any way upon the amount of wage expenditures of such employers shall always be open for inspection by the commission or any of its authorized auditors, accountants or inspectors for the purpose of ascertaining the correctness of the wage expenditure and number of men employed and such other information as may be necessary for the uses and purposes of the commission in the administration of this chapter.

§ 114. Interstate commerce.— The provisions of this chapter shall apply to employers and employees engaged in intrastate, and also in interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that such employer and his employees working only in this state may, subject to the approval and in the manner provided by the commission and so far as not forbidden by any act of congress, accept and become bound by the provisions of this chapter in like manner and with the same effect in all respects as provided herein for other employers and their employees.

Compare § 2, grs. 1–8, 10.

The Federal Employers' Liability Act, c. 149, 35 Stat. 65; c. 143, 36 Stat. 291, entitled "An Act Relating to the liability of common carriers by railroad to their employees in certain cases," excludes operation of the Workmen's Compensation Law of New York as concerns all railroad employees injured while engaged in interstate commerce, whether the accident be due to negligence on the part of the railroad or not: New York Central R. R. Co. v. Winfield, 244 U. S. ——, May 21, 1917. This decision of the Supreme Court of the United States reversed a decision of the Court of Appeals of New York which had held that the Federal Employers' Liability Act was inapplicable to accidents not due to the railroads' negligence.

Definition of interstate commerce becomes important in view of the U. S. Supreme Court decision. In the compensation case of New York Central R. R. Co. v. White, 243 U. S. 188, 207, March 6, 1917, the U. S. Supreme Court, not long before its decision in the Winfield case, had affirmed a decision of the Court of Appeals of New York holding that railroad employees engaged in new construction work are not engaged in interstate commerce. In other compensation cases, the Appellate Division of the New York Supreme Court has held that a railroad employee injured while repairing an empty car of a foreign company is not engaged in interstate commerce: Parsons v. Delaware & Hudson Co., 167 App. Div. 536; Orkzesz v. Lehigh Valley R. R. Co., 170 App. Div. 15; also an employee injured while working for an intrastate railroad which occasionally carries interstate baggage, freight, passengers, cars, etc.: Fairchild v. Pennsylvania R. R. Co., 170 App. Div. 135.

In Southern Pacific Co. v. Jensen, 244 U. S. ——, decided at the same time with the Winfield case, the U. S. Supreme Court held that the Federal Employers' Liability Act was inapplicable, though the Southern Pacific Co. owned and operated a railroad as a common carrier; Jensen having been injured while helping to load the Southern Pacific Co.'s ocean steamship, El Oriente, his case was held to fall within the jurisdiction of the Federal maritime law and the decision of the N. Y. Court of Appeals was reversed on the ground that the Federal maritime law utterly excludes operation of the New York Workmen's Compensation Law. In Clyde Steam-

ship Co. v. Walker, 244 U. S. ——, reversed by the U. S. Supreme Court at the same time with Southern Pacific Co. v. Jensen, the N. Y. Court of Appeals had held that a claim for compensation might exist concurrently with a remedy in admiralty.

For an opinion in line with the Winfield decision of the U. S. Supreme Court compare Saxon v. Erie R. R. Co., —— N. Y. ——, July 11, 1917.

§ 115. **Penalties for false representation.**— If for the purpose of obtaining any benefit or payment under the provisions of this chapter, either for himself or any other person, any person wilfully makes a false statement or representation, he shall be guilty of a misdemeanor.

§ 116. **Limitation of time.**— No limitation of time provided in this chapter shall run as against any person who is mentally incompetent or a minor dependent so long as he has no committee, guardian or next friend.

Compare §§ 18 and 28.

§ 117. **Duties of commissioner of labor.**— The commissioner of labor shall render to the commission any proper aid and assistance by the department of labor as in his judgment does not interfere with the proper conduct of such department.

§ 118. **Unconstitutional provisions.**— If any section or provision of this chapter be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the chapter as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

§ 119. **Actions or causes of action pending.**— This act shall not affect any action pending or cause of action existing or which accrued prior to July first, nineteen hundred and fourteen.

ARTICLE 7

LAWS REPEALED; WHEN TO TAKE EFFECT

Section 130. Laws repealed.
131. When to take effect.

§ 130. **Laws repealed.**— Article fourteen-a and sections two hundred and fifteen to two hundred and nineteen-g, both inclusive, of chapter thirty-six of the laws of nineteen hundred and nine, [1]as amended by chapter six hundred and seventy-four of the laws of nineteen hundred and ten, are hereby repealed.

[1] "As amended," should read "as added."

Article 14-a, indentical with §§ 215–219g, constituting the first workmen's compensation law of New York, was declared unconstitutional in Ives v. South Buffalo Railway Co., 201 N. Y. 271 (1911.)

§ 131. **When to take effect.**— This chapter shall take effect [1]immediately. provided that the application of this chapter as between employers and employees and the payment of compensation for injuries to employees or their dependents, in case of death, shall take effect July first, nineteen hundred and fourteen, but payments into the state insurance fund may be made prior to July first, nineteen hundred and fourteen.

[1] Word "immediately" substituted for words "January first, nineteen hundred and fourteen," by L. 1914, ch. 41, in effect March 16, 1914.

The amendments of L. 1916, ch. 622, took effect June 1, 1916, and the amendments of L. 1917, ch. 705, July 1, 1917.

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